

1 VIRGINIA:

2 IN THE COUNTY OF WASHINGTON

3 VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY

4 VIRGINIA GAS AND OIL BOARD

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9 JULY 17, 2001

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12 APPEARANCES:

13 RICHARD GILLIAM, COAL REPRESENTATIVE

14 MASON BRENT, GAS & OIL INDUSTRY REPRESENTATIVE

15 BENNY WAMPLER, DEPUTY DIRECTOR OF THE DEPARTMENT OF MINES,
16 MINERALS AND ENERGY AND CHAIRMAN

MAX LEWIS, PUBLIC MEMBER

CLYDE KING, PUBLIC MEMBER

17 SANDRA RIGGS, ASSISTANT ATTORNEY GENERAL

18 BOB WILSON, DIRECTOR OF THE DIVISION OF GAS & OIL AND ACTING
19 PRINCIPAL EXECUTIVE TO THE STAFF OF THE BOARD

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****AGENDA ATTACHED

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4 BENNY WAMPLER: Okay, we'll call the meeting to
5 order. My name is Benny Wampler. I'm Deputy Director of the
6 Department of Mines, Minerals and Energy, and Chairman of the
7 Gas & Oil Board and I'll ask the members to introduce
8 themselves, starting with Mr. Gilliam.

9 RICHARD GILLIAM: I'm Richard Gilliam, Abingdon,
10 coal member.

11 MASON BRENT: My name is Mason Brent. I'm from
12 Richmond, Virginia, and I represent the Gas and Oil Industry.

13 SANDRA RIGGS: I'm Sandra Riggs with Office of the
14 Attorney General and I'm here to advise the Board.

15 MAX LEWIS: Max Lewis from Buchanan County, a
16 public member.

17 CLYDE KING: Clyde King from Abingdon, a public
18 member.

19 BOB WILSON: I'm Bob Wilson, Director of the
20 Division of Gas & Oil and principal executive to the staff of
21 the Board.

22 BENNY WAMPLER: The first item on the agenda today
23 is reconvening of docket number VGOB-94-10/24-0481-01 for
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1 unit P-308 for further consideration of applications for
2 calculations and thereafter disbursement of funds on deposit
3 in the drilling unit escrow account. We'd ask the parties
4 that wish to address the Board to come forward at this time.
5 If you will, please state your names for the record.

6 JIM KISER: Jim Kiser on behalf of Equitable
7 Production Company.

8 HENRY KEULING-STOUT: And I am Henry Keuling-Stout
9 representing Harry Anderson and Glen Anderson.

10 BENNY WAMPLER: Mr. Stout, you made the application
11 to the Board, so you may proceed with your request.

12 HENRY KEULING-STOUT: Yes, we made application to
13 the Board. This is a situation in which there was a question
14 about the title of a Mary Anderson, a Hazie Anderson and a
15 Chrissy Anderson, people who had allegedly continued to have
16 an interest in the property which Glen Anderson and Harry
17 Anderson claim subject to the life estate of their mother,
18 Ruby.

19 The matter stayed in Court for some period of time.
20 But on the 20th day of January of 2001, Judge Keary Williams
21 of the Buchanan County Circuit Court, sitting for the
22 Dickenson County Circuit Court where the suit was filed, made
23 a ruling which has been made available to the Court, and I
24

1 have additional copies if any Board member needs to...needs
2 to review that. At which time it was determined that the
3 Estates of Mary, Hazie or Chrissy Anderson indeed had no
4 continuing right or interest in the property owned by Glen
5 and Harry Anderson.

6 At that time, we filed a petition stating that the
7 amounts of money that were held in escrow should be released.

8 The escrow is in two forms. Virginia Gas Exploration
9 Company placed the monies that it was receiving or the...let
10 me back up a little bit. There were two companies involved.

11 One was Virginia Gas Exploration and the other was
12 Equitable. Equitable decided to do, and was allowed by the
13 Board, to do an internal escrow. So, it was not put in the
14 bank. They kept it themselves. Virginia Gas decided to pay
15 the money into escrow into banking organizations. It has
16 been through two or three banking organizations and that is
17 what has taken some time was to get the documents, some of
18 those banking document were tied up in an audit, and we've
19 now had a chance to review those banking documents.

20 There's one page which I think will sort of
21 summarize where we are, it is the EH-108 production sheet
22 from Virginia Gas. And not all of the 1/8 royalty on the EH-
23 108, not all of the royalty on EH-108 was placed into escrow.

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1 It was only so much of the royalty as represented the
2 portion of EH-108 that was covered by the disputed title.

3 BENNY WAMPLER: Let me...let me stop you for just
4 one second. Is it going to be more convenient to go ahead
5 and call both of these first two items so that...are you
6 going to back P-308 and EH-108?

7 HENRY KEULING-STOUT: Yes, because they're both...
8 they're both together.

9 BENNY WAMPLER: Let me go ahead and call that, so if
10 there were to be anyone else here to speak to that.

11 HENRY KEULING-STOUT: All right.

12 BENNY WAMPLER: So, we'll also call docket number
13 VGOB-93-01/19-0313-01, which is also continued from June.
14 Any parties that wish to address the Board in this matter
15 come forward at this time, please.

16 (No one comes forward)

17 BENNY WAMPLER: The two parties that are here are
18 currently recognized. You may proceed. There are no others.

19 HENRY KEULING-STOUT: Thank you, Mr. Wampler. In
20 EH-108 there's...only 67.68% of the actual 1/8 royalty was
21 placed into escrow and that's because 67.68%, only 67.68% of
22 the EH-108 was covered by the description of the land that
23 was in question in the Court suit, and that is reflected by

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1 the Virginia Gas Production report. Because what they do,
2 they say this is as of, I think their figures are as of...it
3 would appear January 1, probably of 2001. But they have
4 production to date \$1,419,552.80 and then they said deposited
5 with First Union Bank. They have 0.084 and some figures.
6 And if you take...and that figure, the 0.084 is the
7 equivalent of 67.68% of the total royalty. Am I current with
8 everybody? And when you multiply that times the gross
9 production, you get a total in the escrow. Now, that's the
10 total they paid into escrow, the \$120,000 figure. It's not
11 the total that the bank has, but it's the total they paid.
12 We agree with that figure, that 67.68%, that that's...that
13 was what was put into escrow and that that is 67% of
14 the...the other amount apparently was paid directly without
15 going through escrow to the parties in the circle.

16 Now, if you go on down on the same sheet, it says
17 how the funds...how the escrowed funds should be divided up
18 or the ownership of them. As far as Harry and Corbet
19 Anderson, or Harry and Glen Anderson, it says, \$93,140.41.
20 That of that \$120,000 they say...of the production, and if
21 you divide the \$93,140 into \$120,094 you get 77.556% of the
22 total in escrow.

23 We agree that Mr. Glen and Harry Anderson are
24

1 entitled to 77.556% of the total amount in escrow and it
2 would appear that Virginia Gas is agreeing to the same figure
3 because that's where I came up with the figure. In my
4 independent looking at it, if you add the acreage and all
5 like that, it comes up with the same figure.

6 It is our understanding that as of April 1, 2001
7 the First Union Bank, which is the current escrow, it has
8 been through about three banks. But the current escrow, and
9 as of April 1, is a \$145,771.60, says total cash to date. We
10 have now been provided documentation from the banks. It's
11 not complete for all the years since 1992. But it's...I
12 think since 1994 appears to be complete and it does appear
13 that the money was put into treasury bills, notes, on
14 interest and the the bank...our concern was, well, did the
15 bank just hold those funds and do nothing with it? But it
16 appears there's nothing we can see from the document that
17 we've been provided that the bank didn't at least apply
18 it...invest it. So, at this point, as to Virginia Gas, the
19 \$145,000 figure is correct through April the 1st. Of course,
20 we're now into July. I'm sure there's more interest that has
21 been accrued. But our claim would be, and we've heard no
22 objection from Virginia Gas and they would appear to agree,
23 that Harry and Glen Anderson are entitled to 77.556% of that

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1 amount that's currently in escrow. And then we've been
2 advised that we should at the appropriate time, and I don't
3 know whether this is it, state how that is to be distributed.
4 And since the deed under which we claim is a life estate
5 deed, we have a specific way that we would like it so that
6 the mother can have her appropriate share of the royalty. We
7 have a way that we would like distributed and I don't know
8 whether we tell the bank that or whether we advise you folks,
9 or whether we advise counsel how we would like the money
10 distributed.

11 BENNY WAMPLER: Yeah, we would need you to tell us.

12 HENRY KEULING-STOUT: All right.

13 BENNY WAMPLER: We need to know how to---.

14 HENRY KEULING-STOUT: We'd like a 1/3---.

15 BENNY WAMPLER: We have to direct the bank on how
16 the bank is to pay.

17 HENRY KEULING-STOUT: A 1/3 for Mr. Harry Anderson,
18 a 1/3 for Mr. Glen Anderson and a 1/3 for Ms. Ruby A. Forcum.
19 That's R-U-B-Y A. F-O-R-C-U-M.

20 Now, as to the Equitable, there's only...that's a
21 very small...Mr. Kiser can assist us in this, also. There's
22 only the grand total and I think this is through...the only
23 date I see is about through October of 2000. But it would
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1 appear that...there's only a small...\$200 or \$300 that comes
2 from...now, that is a different...that's a different tract or
3 it's a different Will.

4 JIM KISER: Yeah, it's P-308.

5 HENRY KEULING-STOUT: That's P-308. A certain...the
6 way Equitable did it, they took out...their sub Tract 12 is
7 the one for the Anderson's. So, there's a small amount there
8 and---.

9 JIM KISER: It's through the end of 2000,
10 12/31/2000, in the amount of \$181.79. I talked with Mr.
11 Keuling-Stout and Equitable's inhouse accounting folks had
12 requested that rather than spending the time to create the
13 spreadsheets on that small amount of money, to calculate the
14 interest on a monthly basis and since it is an internal
15 escrow and we could agree on, you know, whatever we can agree
16 on, we've offered to add an interest amount of \$50 to that
17 \$181, which would actually be greater than the 5.5% interest
18 calculated on a monthly basis. And I think Mr. Keuling-Stout
19 has agreed to that.

20 HENRY KEULING-STOUT: I have agreed to that assuming
21 that...the \$181.79, is that through what date?

22 JIM KISER: That's through---.

23 HENRY KEULING-STOUT: That's says October of last
24

1 year?

2 JIM KISER: My sheet says...looks like December of
3 last year.

4 HENRY KEULING-STOUT: Oh, that is December. That's
5 12.

6 JIM KISER: Yeah. It's through the end of 2000.

7 HENRY KEULING-STOUT: All right. Can we get it up
8 through now?

9 JIM KISER: Sure. Yeah.

10 HENRY KEULING-STOUT: Okay. So, if we can get it
11 current, we'll have no problem with P-308. We would like
12 that also...now, as to that, I think, that all goes to Harry
13 and Glen, correct, or is it for the same restriction, because
14 that's only Harry and Glen's portion?

15 JIM KISER: It all goes to them.

16 HENRY KEULING-STOUT: That all goes to Harry and
17 Glen and then we'll work out with them, I take it...or
18 through the Board's order, we'd like it divided three ways.

19 BENNY WAMPLER: The same 1/3, 1/3 and 1/3?

20 HENRY KEULING-STOUT: The same 1/3, 1/3 and 1/3.

21 BENNY WAMPLER: Okay.

22 HENRY KEULING-STOUT: Three checks.

23 MASON BRENT: Didn't I understand the way you would
24

1 bring it current was to add \$50 to it?

2 HENRY KEULING-STOUT: No.

3 JIM KISER: No, that would be the interest.

4 SANDRA RIGGS: That would be the interest.

5 MASON BRENT: Oh, the interest.

6 JIM KISER: The reason it's not...it probably hasn't
7 been calculated since that time is such a small amount, it's
8 probably only calculated every six months or three months.

9 SANDRA RIGGS: So, you'll provide me with the
10 principal portion through today's date?

11 JIM KISER: This is it.

12 SANDRA RIGGS: You've got it.

13 JIM KISER: No, this is just through December, 2000.

14 SANDRA RIGGS: To today's date and then we add \$50
15 and then disburse a 1/3, 1/3, 1/3?

16 HENRY KEULING-STOUT: That is correct. And unless
17 the members of the Board have any other questions, I don't
18 have any---.

19 BENNY WAMPLER: Are there any questions from members
20 of the Board?

21 (No audible response.)

22 BENNY WAMPLER: Do either of you have anything
23 further?

24

1 (No audible response.)

2 BENNY WAMPLER: Is there a motion for approval of
3 disbursement?

4 CLYDE KING: So moved.

5 BENNY WAMPLER: A motion. Is there a second?

6 MAX LEWIS: I second.

7 BENNY WAMPLER: The motion is seconded. Any further
8 discussion?

9 (No audible response.)

10 BENNY WAMPLER: All in favor, signify by saying yes.
11 (All members signify yes.)

12 BENNY WAMPLER: Opposed, say no.

13 (No audible response.)

14 BENNY WAMPLER: You have approval. Thank you.

15 HENRY KEULING-STOUT: Thank you.

16 BENNY WAMPLER: The next item on the agenda is a
17 petition from Buchanan Production Company for pooling of a
18 coalbed methane unit under the Oakwood Coalbed Methane Gas
19 Field I Order identified as J-38. This is located in the
20 Garden District. This is docket number VGOB-01-05/15-0890;
21 and we'd ask the parties that wish to address the Board in
22 this matter to come forward at this time.

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1 MARK SWARTZ: Mark Swartz and Les Arrington on
2 behalf of Buchanan Production. I think Brad Swanson's here
3 too.

4 BRAD SWANSON: I'm Brad Swanson on behalf of
5 Virginia Gas Company.

6 MARK SWARTZ: I would like to move to combine for
7 hearing the unit you just called with the next docket item as
8 well. It would be docket item number four concerning J-39.

9 BENNY WAMPLER: Any objections?

10 (No audible response.)

11 BENNY WAMPLER: Okay, we'll also call the next item
12 which is a petition from Buchanan Production Company for
13 pooling of coalbed methane unit identified as J-39. It's
14 today's docket VGOB-01-05/15-0891. We'd ask the parties that
15 wish to address the Board in this matter to come forward at
16 this time.

17 MARK SWARTZ: Mark Swartz and Les Arrington.

18 BRAD SWANSON: Brad Swanson, Virginia Gas.

19 BENNY WAMPLER: The record will show there are no
20 others. You may proceed.

21 MARK SWARTZ: We were here last month with regard to
22 these units and they were continued by agreement of the two
23 companies on the theory that we might be able to reach an
24

1 agreement to at least remove the objections that Virginia Gas
2 had on behalf of its leasehold position.

3 An agreement has been reached and it was reached
4 late yesterday, I think, if I'm not mistaken, and we have yet
5 to reduce it to writing. But Mr. Swanson is here to, I
6 guess, confirm that we have an agreement. Essentially, my
7 understanding in a very broad-brush way is that Buchanan
8 Production Company has agreed to protect the royalty interest
9 in terms of the royalty provisions of the leases that have
10 been obtained by Virginia Gas insofar as they're in this
11 unit. So, whatever the leases call for, Buchanan Production
12 has agreed to make those lessors whole with relation to their
13 contracts. Ultimately, Brad's going to be preparing some
14 assignments, or partial assignments, and that will happen and
15 then, of course, we'll have a legal obligation to do that.

16 In addition to agreeing to protect the leases,
17 there has been a...although it's not really pertinent to you
18 all, but it is pertinent to Mr. Wilson, there has also been
19 an agreement to withdraw the objections that were sort of on
20 again/off again permit objections that were filed with regard
21 to these two units so that...now, I will say, if you look at
22 Exhibit B-3, most of the people that are listed as
23 respondents have an asterisk after their name and those were
24

1 folks that we leased by Virginia Gas or it was in
2 (inaudible). So, this agreement essentially makes the
3 dispute with regard to those people go away which is, you
4 know, pretty significant in the first unit and about half of
5 the second unit. But there are still some folks who they
6 were unable to lease and, of course, there's Norfolk Southern
7 as well in the units. So, we do need to have a pooling
8 hearing even though we have reached an agreement. And, I
9 guess, I would just ask Brad, do we have an agreement and
10 have I at least in a broad-brush sort of way accurately
11 described what we've agreed to?

12 BRAD SWANSON: That is correct.

13 BENNY WAMPLER: Thank you.

14 MARK SWARTZ: Thanks for coming.

15 BRAD SWANSON: Sure.

16 MARK SWARTZ: With that---.

17 BRAD SWANSON: If I'm no longer needed, I'm
18 leaving---.

19 BENNY WAMPLER: Any questions from members of the
20 Board?

21 MASON BRENT: I don't think I have any questions.

22 BENNY WAMPLER: Okay.

23 MARK SWARTZ: You don't want to hang around, huh?

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1 BENNY WAMPLER: Okay, thank you.

2 BRAD SWANSON: Thank you.

3 MARK SWARTZ: Mr. Arrington, do you want to be
4 sworn, here?

5 (Witness is duly sworn.)

6

7 LESLIE K. ARRINGTON

8 having been duly sworn, was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 QUESTIONS BY MR. SWARTZ:

12 Q. With regard to the applications in J-38 and
13 39, did you either prepare or cause to be prepared the
14 notices, amended notices, applications and exhibits thereto?

15 A. Yes, I did.

16 Q. Okay. And, in fact, you've signed the
17 notices and applications, is that correct?

18 A. That's correct.

19 Q. Who's the applicant?

20 A. Buchanan Production Company.

21 Q. Is Buchanan Production Company a Virginia
22 General Partnership?

23 A. Yes, it is.

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1 Q. And is Buchanan Production Company a
2 partnership that has two partners who are Appalachian
3 Operators, Inc. and Appalachian Methane, Inc.?

4 A. Yes, it is.

5 Q. And are both of those partners and Buchanan
6 Production Company wholly owned indirect subsidiaries of
7 Consol Energy, Inc.?

8 A. Yes, it is.

9 Q. Is Buchanan Production Company authorized to
10 do business in the Commonwealth of Virginia?

11 A. Yes, it is.

12 Q. With regard to these two applications, who
13 is it that Buchanan Production Company is asking be appointed
14 as the Board's designated operator?

15 A. Consol Energy.

16 Q. Is Consol Energy, Inc. a Delaware
17 Corporation?

18 A. Yes, it is.

19 Q. Is it authorized to do business in the
20 Commonwealth?

21 A. Yes, it is.

22 Q. Has Consol Energy, Inc. registered with the
23 Department of Mines, Minerals and Energy and does it have a
24

1 blanket bond on file with regard to these wells?

2 A. Yes, it does.

3 Q. At some point in the early '90s, did the
4 management committee of Buchanan Production Company delegate
5 to Consol, Inc. the predecessor of Consol Energy, Inc. the
6 responsibility of managing and operating its coalbed methane
7 properties?

8 A. Yes, it did.

9 Q. And did Consol, Inc. accept that delegation
10 and has it, in fact, undertaken to do that since the early
11 '90s?

12 A. Yes, it has.

13 Q. Have you listed the folks that you are
14 seeking to pool in your amended notice of hearing with regard
15 to both of these units?

16 A. Yes, we have.

17 Q. And would they also then be relisted on
18 Exhibit B-3?

19 A. Yes, they are.

20 Q. Okay. If we look at...we'll just take J-38
21 as an example. If we look at Exhibit B-3, there is quite a
22 list of Caroline Cole heirs, correct?

23 A. That's correct.

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1 Q. And after most of their names, there's an
2 asterisk?

3 A. There is.

4 Q. And what does that indicate?

5 A. It indicates an interest that was leased by
6 Virginia Gas.

7 Q. And that was the subject of the agreement
8 that we just described?

9 A. Yes, it was.

10 Q. But there are a few of the coal heirs that
11 were not leased, for example, Therman G. and Iris A. Cooper,
12 do you see that?

13 A. That's correct.

14 Q. And then there's also in Tract 2, Norfolk
15 Southern, correct?

16 A. Correct.

17 Q. So, it is...in spite of the fact that many
18 of these folks are leased and you've reached an agreement
19 with their lessee, it is still necessary to pool both of
20 these units, correct?

21 A. That is correct, yes.

22 Q. Okay. And if we flip backwards just one
23 page ahead of B-3, we're looking at Exhibit A, page two for
24

1 unit J-38. Do you see that?

2 A. That's correct.

3 Q. Could you tell the Board what interest the
4 applicant has acquired in that unit and what interest you're
5 seeking to pool?

6 A. Yes. We have acquired 74.6804% of the coal
7 owners coalbed methane interest, and 72.2247% of the oil and
8 gas owners coalbed methane interest. We're seeking to pool
9 25.3196% of the coal owners coalbed methane interest and
10 27.7753% of the oil and gas owners coalbed methane interest.
11 And we have underneath this unit 100% of the coal leased.

12 Q. With regard to the impact of the agreement
13 with Virginia Gas and their leases, is it true that about 20%
14 of the interest that you're seeking to pool are subject to
15 the Virginia Gas leases that you're going to be taking a
16 partial assignment?

17 A. I believe that's correct.

18 Q. So, essentially the pooling with regard to
19 coal, in effect, is affecting 5% and with regard to oil and
20 gas, is the net effect is about 7% of the unit?

21 A. Yes.

22 Q. Okay. Turning to the same sort of issues
23 with regard to J-39, I'd ask you first to look at Exhibit B-

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1 3. And, again, we have a number of the Caroline Cole heirs,
2 correct?

3 A. That's correct.

4 Q. And again you're showing that many of them,
5 in fact a majority of them, were leased by Virginia Gas?

6 A. Correct.

7 Q. And, again, your agreement with Virginia Gas
8 will apply to those folks?

9 A. Correct.

10 Q. In addition to a couple of outstanding heirs
11 that Virginia Gas was not able to get leases from, there's
12 also Norfolk Southern in Tracts 5 and 6, is that correct?

13 A. That's correct.

14 Q. Which would require pooling?

15 A. Yes.

16 Q. Going to Exhibit A, page two, of J---?

17 BENNY WAMPLER: Before you do that, on J-39, I do
18 not have an asterisk by the names of those folks. So, if you
19 want to just in my copy...not on J-39 Exhibit E.

20 (Ms. Riggs confers with Mr. Wampler.)

21 MARK SWARTZ: No, it would be B-3.

22 BENNY WAMPLER: It would be what?

23 MARK SWARTZ: B-3. There may not be an asterisk on
24

1 E.

2 BENNY WAMPLER: Okay. B-3.

3 CLYDE KING: B-3?

4 MARK SWARTZ: Okay. It wouldn't be the first time.

5 Q. Okay. Les, with regard to Exhibit A, page
6 two, now concerning unit J-39, could you describe the
7 interest that you've acquired and the interest that you're
8 seeking to pool, and again, quantify roughly what the effect
9 of the agreement with Virginia Gas has had?

10 A. Yes. We have leased 92.3766% of coal owners
11 coalbed methane interest, and 92.3672% of the oil and gas
12 owners interest. We're seeking to pool 7.6234% of the coal
13 owners coalbed methane interest and 7.6328% of the oil and
14 gas owners interest. We have 100% of the coal leased below
15 this unit.

16 Q. And the interest subject to the leases with
17 Virginia Gas here are roughly 4%, is that right?

18 A. Correct.

19 Q. So, the net effect is pooling about 3½%?

20 A. That's correct.

21 Q. That wasn't subject to a lease?

22 A. Correct.

23 Q. As long as we're looking at the exhibits to
24

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1 these two units, lets take a look at the plats to both units.
2 In J-38, you're proposing one well, is that correct?
3 A. We are. That's correct.
4 Q. And is that within the drilling window?
5 A. Yes, it is.
6 Q. Okay. Is that well over a mine or a mine
7 plan?
8 A. It is over a proposed mine plan for the
9 Buchanan Number One mine.
10 Q. Okay. And it would be located in a proposed
11 longwall panel, correct?
12 A. That's correct.
13 Q. Are those plans on file?
14 A. With the Gas and Oil Director.
15 Q. Okay. And in 38, the mine plan well over
16 the longwall panel actually occurs in the window, correct?
17 A. It does.
18 Q. In 39, what's the situation?
19 A. It's extremely close to the drilling window,
20 if not, just barely outside of it.
21 Q. And is that well location driven by the mine
22 plan?
23 A. It is.

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1 Q. And are you requesting an exception with
2 regard to that predicated upon degasing in accordance with
3 the mine plan that you filed?

4 A. Yes.

5 Q. Okay.

6 BENNY WAMPLER: Is that mine plan on file?

7 LESLIE K. ARRINGTON: Yes.

8 Q. And, again, J-39 will also be over Buchanan
9 Number One mine?

10 A. Yes, it is.

11 Q. And with regard to J-39, you're only
12 proposing one well in that 80 acre unit?

13 A. That's correct.

14 Q. Have you filed with the Board estimated
15 costs for these two wells?

16 A. Yes, we have. With respect to unit J-38, or
17 well J-38, the estimated cost is \$202,882.08, to an estimated
18 depth of 2,050 feet. For unit J-39, the estimated cost is
19 \$200,959.15, to an estimated depth 2,004.

20 Q. Now, you filed permanent applications for
21 both of these wells, but they're on hold in Mr. Wilson's
22 office, correct?

23 A. Yes, they are.

24

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1 Q. Is the only person or party objecting to
2 those Virginia Gas?

3 A. Yes, it was.

4 Q. So, that's probably resolved?

5 A. Correct.

6 Q. Now, both of these units would be frac units
7 in the Oakwood I Field, correct?

8 A. That's correct.

9 Q. And they're 80 acre units?

10 A. Yes, they are.

11 Q. You're seeking to pool and produce from the
12 Tiller on down, is that correct?

13 A. Yes, we are.

14 Q. Okay. Obviously, you've leased the majority
15 of both of these units. Could you describe for the Board the
16 lease terms that you've been offering and, in general, the
17 lease terms of the leases that you've acquired?

18 A. Yes. Our standard lease terms are a \$1 per
19 acre per year for a coalbed methane lease with a five year
20 paid up term with a 1/8 royalty.

21 Q. And would you recommend those terms to the
22 Board to be included in any order that it might issue with
23 regard to how to treat folks who were deemed to have been
24

1 leased?

2 A. Yes, we would.

3 Q. Now, with regard to notice issues here, did
4 you mail to each of the folks listed in the amended notice
5 and the amended Exhibit B-3 as required by code?

6 A. Yes, we did. We mailed by Certified
7 Mail/Return Receipt requested on the second occasion on May
8 the 23rd of 2001, and both of them were published in the
9 Bluefield Daily Telegraph on May the 31st of 2001.

10 Q. And when you published in the Bluefield
11 Daily Telegraph, what was it that was published?

12 A. The amended notice of hearing and associated
13 map.

14 Q. Okay. And have you filed this morning with
15 the Board proof of publication for both of these units and
16 you're certification with regard to mailing?

17 A. Yes, we did.

18 Q. Do you want to dismiss any respondents
19 today?

20 A. No.

21 Q. Do you want to add any?

22 A. No.

23 Q. With regard to escrow, it appears that J-38,
24

--

1 even though we did not submit in Exhibit E, correct?

2 A. That's correct. We did not.

3 Q. As we look at the ownership, it's obvious
4 that there's a requirement of escrow and that we're going to
5 have to submit an Exhibit E, correct?

6 A. Yes, it is. That's correct.

7 Q. And that would be with regard to Tract 2 in
8 J-38, correct?

9 A. That's correct.

10 Q. And the problem there is that Norfolk
11 Southern is adverse to Yukon/Pocahontas, it's an oil and gas
12 coal issue?

13 A. That's correct, it is.

14 Q. And the other tracts however in J-38 do not
15 require escrow?

16 A. Correct.

17 Q. With regard to J-39 in the escrow issue, you
18 have, in fact, filed an Exhibit E, correct?

19 A. We have.

20 Q. And that Exhibit E sets forth the tracts
21 that would require escrow and the parties with conflicting
22 claims, correct?

23 A. It does.

24

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1 Q. And there's also one odd item in...with
2 regard to escrow in J-39. In addition to just a conflict,
3 there's also a title issue with regard to Tract 10 because
4 you've got a mapping overlap, correct?

5 A. That's correct.

6 Q. And that's something that those folks are
7 going to have to resolve?

8 A. Correct.

9 Q. So, even if there weren't a conflict, there
10 would be a mapping issue?

11 A. It would be.

12 Q. Only with regard to Tract 10, though?

13 A. Correct.

14 SANDRA RIGGS: Excuse me for a minute. On J-38---.

15 MARK SWARTZ: Uh-huh.

16 SANDRA RIGGS: I have an Exhibit E that shows Tracts
17 1 and 2 being escrowed. You're saying that it's just Tract
18 2. Do you need to see my exhibit?

19 MARK SWARTZ: Yeah. Well, see, you've probably got
20 the original. What I'm looking at is the amended.

21 SANDRA RIGGS: Okay.

22 MARK SWARTZ: But Les is probably going to know.
23 (Mr. Arrington confers with Mr. Swartz.)
24

1 SANDRA RIGGS: Dated 4/12/01.

2 LESLIE ARRINGTON: Yeah, that's---.

3 MARK SWARTZ: Let me just borrow that for a second.

4 (Board members and Mr. Arrington and Mr. Swartz

5 confer among themselves.)

6 LESLIE K. ARRINGTON: Now, I see why. We had to

7 amend the whole application, but the Exhibit E did not change

8 is what happened there. And the reason the Caroline Cole's

9 ...they own various interest. One of them might own the

10 three seam...Pocahontas #3 seam in, you know, various

11 interest. The Exhibit E did not change from the original

12 application.

13 SANDRA RIGGS: So, this is the correct Exhibit E.

14 LESLIE K. ARRINGTON: Yes.

15 SANDRA RIGGS: So, it will be Tracts 1 and 2 in

16 escrow?

17 LESLIE K. ARRINGTON: Yes, it would be.

18 MARK SWARTZ: Well, and...I think you may have to

19 revise it because it looks like you also...are you looking at

20 J-38, Sandra?

21 SANDRA RIGGS: J-38.

22 MARK SWARTZ: Okay, that stands as is.

23 Q. Now, lastly, in terms of...I guess we can

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1 just pick any of these exhibits, but in terms of royalty
2 interest and carried interest and participation and so forth,
3 there is on Exhibit B-3 and Exhibit E and so forth, you're
4 reporting a percentage for every person you've named,
5 correct?

6 A. We have.

7 Q. And that's...the column that that percentage
8 is entitled percent of unit, correct?

9 A. It is.

10 Q. And is that percentage calculated by taking
11 the amount of acreage that that person has in the 80 acre
12 unit and dividing that acreage by 80?

13 A. Yes, it is.

14 Q. Okay. And that would literally represent
15 the amount of acreage that they have either on an undivided
16 interest basis or a combined basis and would represent their
17 acreage in that 80 acre unit?

18 A. Yes, it would.

19 Q. Okay. And they would use that percentage if
20 they wanted to figure out what their royalty interest might
21 be?

22 A. That's correct.

23 Q. And they would take that percentage, the
24

1 percent of unit times 12½% and that would be their royalty
2 share?

3 A. Correct.

4 Q. And if they wanted to figure out what it
5 would cost to participate in a...in one of these two
6 wells---?

7 A. Uh-huh.

8 Q. ---they would take their percentage times
9 the estimate and that would be an estimate of the dollars
10 that they would have to invest to participate?

11 A. Correct.

12 Q. And the same percentage would be used to
13 apply to the multiplier for the carried interest?

14 A. Correct.

15 Q. Okay.

16 MASON BRENT: May I ask a question on this?

17 BENNY WAMPLER: Yes.

18 MASON BRENT: May I ask you a question on this?

19 Earlier you indicated with regard to J-38 that after you took
20 into account the Virginia Gas transfer, or assignment of
21 leases, or whatever on the coal...from the coal owners's
22 perspective, that left 5% unleased.

23 MARK SWARTZ: I think it was---.

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1 MASON BRENT: You indicated that that brought it
2 down to 20% as represented by the Virginia Gas.

3 MARK SWARTZ: Right. In the range of 5 to 7%
4 depending...because the coal and oil and gas interest are not
5 equivalent.

6 MASON BRENT: I understand that.

7 MARK SWARTZ: Okay.

8 MASON BRENT: You'd indicated earlier that it was
9 roughly 5% left unleased yet....on the coal side I'm talking
10 about, yet Norfolk Southern has a 6.675.

11 LESLIE K. ARRINGTON: That's correct. But on the
12 coal side, Norfolk Southern on that interest only has the
13 coal from 800 feet up and Yukon/Pocahontas has the coal 800
14 feet down. And generally we don't...I mean 800 feet is about
15 our cut off line. We do get up in the 600 foot range.

16 MASON BRENT: So, does the 6.675 include coal that
17 is not owned by Norfolk Southern below the 800 feet?

18 MARK SWARTZ: It's an odd way of asking the
19 question. I'm inclined to agree with you. The answer that I
20 would give is the coal claim of Norfolk and Southern is the
21 coal that's above drainage and would not represent gas that
22 was produced.

23 MASON BRENT: I'm just trying to get the percentages
24

1 to add up.

2 LESLIE K. ARRINGTON: I understand. It would be
3 included in our total percentage that we have that were
4 unleased, if that answers your question, because I...in
5 general, we get...our cutoff is at 600 feet.

6 MASON BRENT: I'm just trying to figure out whether
7 the 5% of the 6.675---.

8 LESLIE K. ARRINGTON: Uh-huh. I see...I see your
9 question.

10 MASON BRENT: Because they don't add up.

11 LESLIE K. ARRINGTON: The majority of the seams are
12 below the 800 feet, the vast majority. We may catch one or
13 maybe two seams at the 800 foot or above. Well, it's only a
14 200 foot interval there that we would catch.

15 MARK SWARTZ: But to answer his question, the 6.75%
16 across from Norfolk Southern---.

17 LESLIE K. ARRINGTON: Right.

18 MARK SWARTZ: ---would represent a 100% of the coal
19 when they only own a part of it?

20 BENNY WAMPLER: Right.

21 MASON BRENT: I see what you were saying.

22 LESLIE K. ARRINGTON: That's correct.

23 Q. And, Les, I just have two final questions
24

1 for you. First of all, would you recommend...is it your
2 recommendation that the Board pool these two units as
3 described in your pooling application in related exhibits as
4 a reasonable means to develop the coalbed methane under these
5 two units?

6 A. Yes, it is.

7 Q. And is it your further recommendation that
8 these units be pooled because the proposal and the plan
9 that's disclosed in both of these applications protects the
10 correlative rights of all claimants?

11 A. Yes, it does.

12 Q. That's all I have.

13 BENNY WAMPLER: Questions from members of the Board?

14 (No audible response.)

15 (Board members confer among themselves.)

16 BENNY WAMPLER: Any questions from members of the
17 Board?

18 (No audible response.)

19 BENNY WAMPLER: Is there a motion?

20 MASON BRENT: Mr. Chairman, I move that we grant the
21 applications.

22 BENNY WAMPLER: Motion for approval. Is there a
23 second?

24

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1 RICHARD GILLIAM: I second.

2 BENNY WAMPLER: Motion and second. Any further
3 discussion?

4 (No audible response.)

5 BENNY WAMPLER: All in favor, signify by saying yes.
6 (All members signify yes.)

7 BENNY WAMPLER: Opposed, say no.
8 (No audible response.)

9 BENNY WAMPLER: You have approval. The next item on
10 the agenda is a petition from Pocahontas Gas Partnership for
11 pooling of a coalbed methane unit under the Oakwood Coalbed
12 Methane Gas Field I Order identified as BB-37. This is
13 docket number VGOB-01-07/17-0901. We'd ask the parties that
14 wish to address the Board in this matter to come forward at
15 this time.

16 MARK SWARTZ: Mark Swartz and Les Arrington on
17 behalf of Pocahontas Gas Partnership.

18 BENNY WAMPLER: The record will show there are no
19 others. You may proceed.

20 MARK SWARTZ: I would request, Mr. Chairman, because
21 we are essentially dealing with the same folks, that you
22 combine docket items five, six and seven for purposes of a
23 pooling hearing.

24

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1 BENNY WAMPLER: Any objection to combining those?
2 It gets everything on the table.
3 (No audible response.)
4 BENNY WAMPLER: I'll go ahead and call those other
5 docket numbers. They're docket number VGOB-01-07/17-0902.
6 That was for BB-38. And for BB-39 is docket number VGOB-01-
7 07/17-0903. We'd ask the parties that wish to address the
8 Board in these matters to come forward at this time.
9 MARK SWARTZ: Mark Swartz and Les Arrington on
10 behalf of Pocahontas Gas Partnership.
11 LINDA SHORT: Linda Short, representative of the
12 Short family.
13 VERN SHORT: Vern Short, representing the Short
14 family.
15 BENNY WAMPLER: Would you state your name for the
16 record, please?
17 WALTER SHORT: Walter Short.
18 BENNY WAMPLER: Thank you.
19 ROBERT ROSE: I'm here on behalf of the Tom Short
20 Estate. I'm Robert Rose.
21 BENNY WAMPLER: You may proceed.
22 MARK SWARTZ: Okay.
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LESLIE K. ARRINGTON
DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Les, I'm going to remind you that you're
still under oath.

A. Yes, sir.

Q. State your name, please.

A. Leslie K. Arrington.

Q. Who do you work for?

A. Consol Energy as a gas engineer.

Q. And are you here today on behalf of the
applicant as well?

A. Yes, I am.

Q. Okay. Who is the applicant in these three
units?

A. Pocahontas Gas Partnership.

Q. Is Pocahontas Gas Partnership a Virginia
General Partnership?

A. Yes, it is.

Q. Are the two partners in Pocahontas Gas
Partnership Consolidation Coal Company and Conoco, Inc.?

A. Yes, it is.

Q. Is the applicant requesting that it,

1 Pocahontas Gas Partnership, be designated as unit operator?

2 A. Yes, it is.

3 Q. Okay. Is Pocahontas Gas Partnership
4 authorized to do business in the Commonwealth of Virginia,
5 has it registered with the Department of Mines, Minerals and
6 Energy and does it have a blanket bond on file as required by
7 law?

8 A. Yes, it does.

9 Q. Have you listed the names of all of the
10 respondents in these three units in the notices of hearing in
11 the exhibits B-3 that you've submitted?

12 A. Yes, we have.

13 Q. And could you tell the Board what you have
14 done to notify those people of the hearing today?

15 A. Yes. We sent notices by Certified
16 Mail/Return Receipt requested and we also published in the
17 Bluefield Daily Telegraph.

18 Q. When did you mail?

19 A. We mailed on June the 6th of 2001, and it
20 was published in the Bluefield Daily Telegraph on June the
21 13th of 2001.

22 Q. When it was published, what was published in
23 the paper?

24

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1 A. The notice of hearing that's attached along
2 with the attached location map.

3 Q. When you mailed to the folks that you've
4 testified you mailed to on, I think, it was June the 6th,
5 what did you send them?

6 A. Copy of the notice of hearing, the pooling
7 application, along with a copy of lease request.

8 Q. When you say lease request, was there
9 actually a proposed lease in the packet?

10 A. Yes, there was.

11 Q. Okay. And did you mail that proposed lease
12 to every...to all of the respondents?

13 A. Yes, we did.

14 Q. Okay. Did you get any of them back?

15 A. No, we did not.

16 Q. Okay. Was that the first time that you had
17 provided proposed leases?

18 A. No, it was not. Previously, there has been
19 lease offers made to all of the individuals.

20 Q. Okay, by the landman?

21 A. Yes, sir.

22 Q. Okay. In case of the Shorts, do you know
23 who that gentleman is?

24

1 A. Terry Owens.

2 Q. Is here today in case we need to talk to
3 him?

4 A. Yes, he is.

5 Q. Did some of these folks have a lawyer for
6 some period of time?

7 A. I believe so.

8 Q. Who was that lawyer?

9 A. The first one I'm not sure. The second one
10 was Doug Campbell.

11 Q. Did you provide Mr. Campbell with a lease as
12 well?

13 A. Yes, sir, we did.

14 Q. With regard to the publication and mailing,
15 have you filed proof of publication with the Board today?

16 A. Yes, we have.

17 Q. And have you filed your certificates with
18 regard to mailing as well?

19 A. Yes, we have.

20 Q. Do you wish to add anybody as a respondent
21 today?

22 A. No, we do not.

23 Q. Do you wish to subtract anybody by
24

1 dismissing them today?

2 A. No.

3 Q. Okay, we've got some variable interests in
4 these units, at least on the oil and gas side, right?

5 A. Correct.

6 Q. Lets look at BB-38 first. If you would look
7 at Exhibit A, page two, would you tell the Board what
8 interest the applicant has been able to acquire in this unit?

9 A. In unit BB-38, we have 100% of the coal
10 owners coalbed methane interest leased.

11 Q. Okay, let me stop you there. So, that means
12 that you've tracked down 100% of the people who own coal in
13 this 80 acre unit and you've been able to lease 100% of those
14 people?

15 A. We have.

16 Q. Okay. Have you been able to track down
17 100% of the people who own oil and gas?

18 A. We have.

19 Q. And how many of those have you been able to
20 lease?

21 A. We've leased 38.7375% of the oil and gas
22 interest.

23 Q. Okay. And what are you seeking to pool?
24

1 A. 61.2625% of the oil and gas interest.

2 Q. And you're not seeking to pool any of the

3 coal interest because you've acquired that?

4 A. That's correct.

5 Q. Okay. Lets turn to BB-39 and let's look at

6 Exhibit A, page two in that application?

7 A. Yes. In that unit, we have 100% of the coal

8 leased. We have 94.85% of the oil and gas interest leased

9 and we're seeking to pool 5.15% of the oil and gas interest.

10 Q. Okay. And let's look at BB-37, A, page two.

11 What have you...what has Pocahontas Gas Partnership acquired

12 in that...in unit BB-37?

13 A. In BB-37, we've leased 100% of the coal

14 interest and 59.0875% of the oil and gas interest and we're

15 seeking to pool 40.9125% of the oil and gas interest.

16 Q. With regard to these three units, are they

17 all frac units?

18 A. Yes, they are.

19 Q. And are you seeking to pool them under the

20 Oakwood I Rules?

21 A. Yes, we are.

22 Q. Okay. Starting again with BB-38 and the

23 plat, you've got one well shown on that plat?

24

1 A. Yes, we do.

2 Q. Is it in the drilling window?

3 A. Yes, it is.

4 Q. Was it surveyed?

5 A. Yes, it was.

6 Q. And you're just proposing the one well?

7 A. Correct.

8 Q. With regard to BB-38, what is your cost

9 estimate?

10 A. BB-38---.

11 Q. Correct.

12 A. ---is \$209,907.33, to an estimated depth of

13 2,520 feet.

14 Q. Now, the permit has been issued for this

15 well, correct?

16 A. It has.

17 Q. Do you know the permit number off hand?

18 A. 4998.

19 Q. Okay. And when was it issued?

20 A. 6/22 of 2001.

21 Q. Turning to BB-39, okay---.

22 LINDA SHORT: Excuse me. Can I interject now?

23 BENNY WAMPLER: I need to get you all sworn in

24

1 that's going to talk.

2 LINDA SHORT: Okay.

3 BENNY WAMPLER: If you'll raise your hand.

4 (Witnesses are duly sworn.)

5 BENNY WAMPLER: You may ask a question.

6 LINDA SHORT: Okay, let's go back to the plat again.

7 That plat has been surveyed. There's a disagreement on that

8 plat.

9 BENNY WAMPLER: Which one is it, ma'am, that you're

10 talking about?

11 LINDA SHORT: BB-38.

12 BENNY WAMPLER: 38?

13 VERN SHORT: Uh-huh.

14 MARK SWARTZ: Now, I'm prepared to deal with this,

15 but I'd like to finish. We're going to have an argument with

16 regard to the survey. I've got my surveyor here.

17 BENNY WAMPLER: Okay.

18 MARK SWARTZ: If you'll let me get through the

19 basics and we can take as long as we need. I'm ready.

20 BENNY WAMPLER: Okay. All right.

21 Q. Mr. Arrington, with regard to 39, okay, how

22 many wells are you proposing for 39?

23 A. One.

24

1 Q. Is it located in the drilling window?

2 A. Yes, sir.

3 Q. Again, is it a frac well in an 80 acre

4 Oakwood I unit?

5 A. Yes, it is.

6 Q. Okay. Have you provided a cost estimate

7 with regard to BB-39?

8 A. Yes, we have. It's...the estimate cost is

9 \$204,447.87. This well has been drilled. It's estimated at

10 a depth of 2,400 feet; permit was 4720; and it was drilled on

11 April the 12th of 2001.

12 Q. And the last unit would be then BB-37, okay.

13 Has a permit been issued on BB-37?

14 A. Yes, it has. Permit number 4997 issued June

15 the 22nd of 2001. The estimated cost for this well is

16 \$202,639.28, to an estimated depth of 2,450 feet.

17 Q. Okay. And, again, this well, BB-37, is the

18 only well proposed and it's in the drilling window?

19 A. That's correct.

20 Q. Okay. So, none of these three wells require

21 an exception?

22 A. That's correct.

23 Q. Okay. With regard to the interest of the

24

1 respondents, let's just look at B-3 for a minute. Pick any
2 one of them. You have a column interest in unit, do you not?

3 A. We do.

4 Q. Okay. And opposite that, have you tried to
5 set forth the interest of every person named in the unit?

6 A. Yes, we have.

7 Q. And that interest is calculated by taking
8 their acreage or their undivided interest in a larger acreage
9 and putting it over 80 acres and dividing it and getting that
10 percentage, correct?

11 A. Correct, it is.

12 Q. So, if some person wanted to figure out what
13 their royalty interest might be, they would take the
14 percentage opposite their name times 12½% and that would be
15 their division interest or royalty interest in the unit?

16 A. Correct.

17 Q. If they wanted to figure out how much of a
18 check they needed to write to become a partner with the
19 operator in the unit, they would take that percentage times
20 the estimated cost, correct?

21 A. That's correct.

22 Q. And if they wanted to calculate a carried
23 interest, you'd use the same percentage times the allocated
24

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1 cost times the 300%?

2 A. Correct.

3 Q. For the leases that you have been able to

4 obtain and the leases that you sent to the folks that have

5 not leased to you, could you tell the Board what the lease

6 terms are that you've been offering?

7 A. Yes. For a coalbed methane lease, it's a \$1

8 per acre per year with a five year paid up term with a 1/8

9 royalty.

10 Q. 1/8 is 12½%, right?

11 A. Correct.

12 Q. When you say a five year paid up term, what

13 do you mean?

14 A. We pay the bonus payments for five years.

15 Q. In advance?

16 A. In advance.

17 Q. So, essentially the five year term bonus is

18 paid up front?

19 A. Correct.

20 Q. And royalties commence after production,

21 correct?

22 A. Correct.

23 Q. And would those be the terms that you would

24

1 recommend to the Board that be inserted in any order in the
2 event this unit is pooled to deal with the question of folks
3 who are deemed to have been leased?

4 A. Yes, we would.

5 Q. Are there conflicting claims that require,
6 or other issues, that require escrow in any of these three
7 units?

8 A. Yes, there is.

9 Q. Let's start with BB-39, you've filed an
10 Exhibit E with regard to BB-39 concerning escrow, correct?

11 A. We have.

12 Q. And essentially, you've got a conflict
13 between Commonwealth Coal and the Short heirs?

14 A. That's correct.

15 Q. With regard to BB-37, there's an Exhibit E
16 as well, and again we have the same Commonwealth Coal/Barney
17 Short, et ux conflict?

18 A. Yes, it is.

19 Q. And would that also be true of BB-38?

20 A. It is.

21 Q. So, at some point, that conflict between the
22 oil and gas and coal ownership either needs to be settled or
23 resolved?

24

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1 A. Correct.

2 Q. And lastly, I would ask you whether or not
3 you would recommend to the Board that the plan of development
4 that's disclosed in these three applications is a reasonable
5 way to allow coalbed methane to be produced from under these
6 three units and still protect the conflicting claims and the
7 non-conflicting claims of all the owners?

8 A. It does.

9 Q. So, would you recommend that the Board
10 approve these three applications as presented?

11 A. Yes, we do.

12 MARK SWARTZ: Now, that's all I have.

13 BENNY WAMPLER: Ms. Short, go ahead.

14 LINDA SHORT: Okay. Thank you. It's nice to see
15 the Board. At least I've heard a lot about you. I'd like to
16 make a statement first, if that would be all right.

17 This is the 5th amendment and I think we all need
18 to realize and review that amendment. It still holds in our
19 country today. It says, "No person shall be deprived on
20 life, liberty or property without due process of law, nor
21 shall private property be taken for public use without just
22 compensation." That is one thing I would like the Board to
23 recognize this morning. As a family, we feel that we have
24

1 lost some rights here and I'm hoping that you can understand
2 our position and that Consol Coal has not been willing to
3 negotiate any type of thing with us at all.

4 Mr. Arrington made a statement about a plat. We
5 also have a survey. It was done by Mr. James Ribble, a
6 certified reputable surveyor. That survey is on record in
7 the Commonwealth of Virginia. This well that they are
8 proposing, they come onto the property without any permission
9 at all.

10 This farm has been in our property for 100 years.
11 We have fenced, maintained, cared, and loved the land. We
12 are a devoted family, Christian family, and the land means a
13 great deal to us.

14 My proposal to the Board today is that we object to
15 the force pooling because that the process here has not been
16 followed. When you come on to people's property, you put a
17 well site without permission. You say there is a plat that
18 says you can. There's a disagreement here, which we can
19 probably go over and show that.

20 I don't understand the proposal from Consol Gas
21 that they're asking that they have permission to go ahead and
22 do the well without talking to the owners. We are the gas
23 and the land owners, but yet they come around every day.

24

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1 They distress my husband everyday. He has lost ten to
2 fifteen pound of weight walking the fence line. They take
3 down the fence line. They let the cattle out. They put it
4 back and then they tear it up with their trucks. They
5 destroy the land. I'm sure you've heard these words before.
6 I'm not the first here to sit in this seat.

7 The gas has to be pooled. We understand that. But
8 Virginia is not keeping any reserves for herself, none.
9 We're shipping it all out north. That's my view. I hope a
10 representative...I'm trying to deal with some of those
11 representatives to pass a bill that Virginia will reserve
12 some of those gas. We might need it. We might be like
13 California. We just might need it. But it's being pooled
14 and people's rights are being over throwed and overtaken.

15 When I spoke with Mr. Arrington on the phone
16 several weeks ago, he told me, he said, "We will take the gas
17 one way or another." That is the statement he made to me
18 when I called and talked with him. I've sent them several
19 letters. I have copies of those letters. I've asked them
20 and told them, we are the owners of the property and the gas,
21 but that's ignored. I have yet to get a reply from Mr.
22 Arrington in a letter form. And when he sent his land man to
23 me, it was not a land man. It was intimidation. You either
24

1 do it or it's force pooled. Okay, but that's the way it is.
2 Everyone know how Consol does.
3 We as a family feel we have rights, okay? There
4 are punitive damages that can be filed. I've worked with Mr.
5 Wilson for two years trying to get water for my families and
6 other communities in that area and he has been very good to
7 help me. This week...only this week after they put a well at
8 36-BB. We had a great blast or whatever you want to call it.
9 I think they frac a well. I'm not an engineer. I'm just a
10 housewife and a Christian person. But I can tell you, I came
11 home from church Sunday and my well pump was burnt up and I
12 had mud, pure mud. I gave Mr. Wilson a bottle of that today.
13 I brought some here. That's another issue that can be
14 settled and Mr. Wilson will help me with that. But at least,
15 you know, Consol should have the decency to come and say
16 let's do this. They have hauled water for people around our
17 mountain for two years. Water that has worms in it. I have
18 a person who can tell you that, to testify to that. Got in
19 her house and crawled in her sink and in her commode. Mr.
20 Rose here has hauled water for two years in his truck for his
21 little family. We have suffered. As a citizen and as a
22 person who is a caring nurse and social worker...I have
23 worked for twenty years, I have worked with Mr. Jim Spencer
24

1 at Tazewell County to get public water. We yet don't have
2 it. But there are many, many families who are suffering and
3 I speak not for myself today but for many.

4 The families have no rights. It is the Board who
5 must change policies, who must look at the people's needs. I
6 know you all set in your safe homes and it's fine and the gas
7 companies don't bother you. But when it comes to your door,
8 it is devastating. I promise you it is. When you have a
9 husband who loses fifteen pounds because he's scared of
10 losing his heritage and his life and his family. What I'm
11 going to leave to my grandson? Muddy water, water being
12 hauled in tanks that they put the tanks down in, the little
13 tubings down in horses and horses drink out of it. That's
14 not right. You know it's not right. Call the health
15 department and they tell you once you take water out of a
16 sanitary container that it is unsanitary to drink. When
17 these wells go in, we will lose that. I've already lost a
18 well. Mr. Wilson knows that I have begged to him for two
19 years to help me with this. I've even called Mr. Claude
20 Morgan in Bluefield. Mr. Morgan, please will you bring us
21 some water. We don't have any. We're not close enough to
22 you. Well, this time the well's 600 feet. I don't know if
23 it will make any difference or not. Meanwhile the families

24

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1 are hauling water. We're struggling. We are people. Please
2 look at us as people.

3 I see Sandy here from the Commonwealth Attorney of
4 Virginia.

5 SANDRA RIGGS: Attorney General.

6 LINDA SHORT: Attorney General. I'm glad, Sandy,
7 that you're here. Please, you all need to stop and look at
8 the people that are being involved. No one's trying to stop
9 any gas production. That's not the answer. The answer is
10 compensation and help for the families that are involved.

11 Again, all I can say is I have tried to notify
12 them. I have called. I have talked and I have sent several
13 letters. I don't have any response at all.

14 I brought a copy of the survey. It is a legal
15 survey. The deeds are legal. They're a hundred years old.
16 How do you go about...can change a hundred year old deed? Is
17 a survey not legal any more? Does it not matter? I mean,
18 you tell me. If I come and tell you that I'm going to put a
19 well beside your house today and you go back and say, well
20 I've got a deed for it and you're not going to do it, then
21 what are you going to do? They're going to come back and
22 say, well, I can do it, and there you are. So, what do you
23 do?

24

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1 Your family suffers. We are a family who will
2 fight. This is an injustice and it is wrong. I have talked
3 to several state representatives. Mr. Wilson knows I have.
4 I have tried really hard for two years. But if I live, I
5 will find one man to listen to me. Maybe Mark Warner's that
6 man. I don't know who it is, but someone will listen to what
7 I'm saying. No one wants to stop Virginia's Gas production.
8 That's not what you want. What you want is compensation for
9 the families who suffer.

10 You tell me, is a survey legal? Is it? I brought
11 you a picture of the proposed well site that they came in and
12 they put that well site on our property without permission.
13 Okay, it's fenced. It has been fenced for a hundred years.
14 I mean, it's like we have no rights at all. As I sit at this
15 table today, I have no rights, and I've hired three
16 attorneys. You can imagine how much money I've paid out.

17 I've sent Mr. Wilson the survey. I showed him.
18 When Mr. Arrington sits here and says he has a plat, he has a
19 survey done by these people back here who have irritated and
20 aggravated my husband to death. Who come on the property
21 three times and we asked them to leave. They slipped back
22 and done it anyway. What do you do? We have 57 acres. I
23 mean, we have proof of it. What more do you do? I mean, if
24

1 I come in and I move in next door to you and I say I'm going
2 to take your land because they say I can.

3 WALTER SHORT: The property of Tom Short's Estate
4 joins this and we don't want this, you know. We'll work with
5 them, but we don't want...we want compensated for it for
6 whatever damage they do.

7 LINDA SHORT: I mean, it's not that you don't---.

8 WALTER SHORT: They don't any...much of a
9 compensation.

10 LINDA SHORT: They don't offer any.

11 WALTER SHORT: Look at the lease here and that tells
12 you enough right there what they offered you.

13 LINDA SHORT: I asked one of the attorneys to send
14 me a copy of the Code of Virginia. I'm not an attorney. So,
15 you all forgive me if I don't give you the right ones. Under
16 45.1-361(21). The Board has this right. You all have this
17 right. "The owner should have a written consent of owners
18 with the right to conduct operations." That's the Code of
19 Virginia. They should...they should have written permission
20 from us. That's what the Board tells me. That's the Code of
21 Virginia. I don't have...they don't have written permission
22 from this Short family to come on to the property and put a
23 well site. You know, all we're asking is that we're treated

24

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1 decently and what is lawful and what is right. If the law
2 applies to me, then it applies to them. I can't go, as Mr.
3 Wilson explained to me, and steal chickens from you and not
4 expect to pay you for them because if I do, then I have stole
5 from you. The gas belongs to the family. It is a family
6 heritage that our forefathers seen right that they preserve
7 it. There should be compensation, not a least put down on
8 your table by a stupid man named Terry. I've never had such
9 an irritating man in my home in my life. He didn't offer a
10 lease. That's not a legal lease. It wasn't signed. It's
11 not legal. It wasn't went over.

12 Maybe I'm wrong, but I have copies of letters that
13 I have sent to Mr. Arrington. I have tried to talk with him
14 and I have talked with other representatives of the state to
15 try to get some help. I would ask the Board that you do not
16 allow this permit to go forward until they have at least
17 tried to make some compensation to this family; to Mr. Rose
18 for him having to haul water; to Mr. Short here. It's like
19 you don't own it. I'm serious. You don't own it. Forget
20 it.

21 WALTER SHORT: None of the wells has ever been dug
22 on the property that we own, the Tom Short's Estate. But
23 they're subject to be there. We don't have to go though this
24

1 again down the road, you know, and drag in attorneys for
2 this.

3 LINDA SHORT: This BB-3---.

4 WALTER SHORT: It should be taken care of, you know,
5 with the Board.

6 BENNY WAMPLER: Is there any well on your surface
7 now?

8 LINDA SHORT: The proposed BB-38 will probably most
9 likely take my sister-in-laws's water. She is very---.

10 SANDRA RIGGS: Is it on your surface?

11 LINDA SHORT: Yes, it is.

12 SANDRA RIGGS: BB-38?

13 LINDA SHORT: That survey shows that that well site
14 is...the picture show that that ribbon was put there. It
15 shows it. I brought you pictures of it.

16 BENNY WAMPLER: And that's where the dispute is, I
17 take it?

18 LINDA SHORT: On BB-37.

19 VERN SHORT: The property dispute.

20 BENNY WAMPLER: They're saying there's a property
21 line and that they're outside your property.

22 VERN SHORT: That's what they're saying.

23 BENNY WAMPLER: Is that correct?

24

1 LESLIE K. ARRINGTON: That's correct.

2 LINDA SHORT: Are we talking about how much footage,
3 a 100 foot? Just enough to get your well site in.

4 VERN SHORT: Yeah. The distance of the property
5 line.

6 LINDA SHORT: If you'll look at the pictures, they
7 show you where the well site is, it is fenced. It has been
8 fenced.

9 BENNY WAMPLER: Is there currently any well on your
10 property?

11 LINDA SHORT: The proposed BB-38 and 37 will be.

12 BENNY WAMPLER: No land disturbance at this time on
13 your property?

14 LINDA SHORT: Not at this time.

15 VERN SHORT: On our property, no.

16 LINDA SHORT: There is an entrance road also.

17 VERN SHORT: On BB-38.

18 LINDA SHORT: On BB-38. We paid a man to come and
19 put an entrance way in. We're not...we're leasing coal to
20 Knox Creek Coal that they done a survey. They done the
21 survey. We didn't do that one. But then they come up short.
22 So, it has just been really bad for us. For the last two
23 months, the surveyor company that Mr. Arrington had used has
24

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1 intimidated my husband. He has come by the house. He has
2 come to my house and said you don't own the property you
3 think you own. To me, that's intimidation. You know, you're
4 entitled to stay in your home and you're entitled to live in
5 peace. The law says we have to have peace in our home. And
6 how can you have peace when you have people out surveying and
7 staring in your windows and your doors and going around your
8 home? How do you that? There is no peace. My husband---.

9 BENNY WAMPLER: Do you have---?

10 LINDA SHORT: ---is very nervous and so, you know,
11 it has just been really hard for this family.

12 BENNY WAMPLER: Mr. Wilson, do you have an
13 application for BB-38?

14 BOB WILSON: Yes.

15 BENNY WAMPLER: Do you have any objection to that?

16 BOB WILSON: No, I did not. The applicant...the
17 permit, I believe, has been issued as of the 22nd of June.
18 We did not receive objections.

19 LINDA SHORT: He did not object. He said that he
20 could not look at that plat or the survey. That was right.
21 Is that right, Mr. Wilson?

22 BOB WILSON: The way the permit---.

23 LINDA SHORT: The dispute over the land?

24

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1 BOB WILSON: Excuse me?

2 LINDA SHORT: You said you couldn't look at that.

3 BOB WILSON: That is correct. The application, as

4 submitted gave you standing as a gas owner, but not as a

5 surface owner and the surface is being disturbed.

6 LINDA SHORT: Right. That goes back to Mr.

7 Arrington, that's the way he submitted it and that's how he

8 got it.

9 BENNY WAMPLER: Okay. I just wanted to get

10 everything on the record for the Board's benefit as well.

11 LINDA SHORT: If I can answer any question, I'll be

12 glad to and tell you the truth as much as I know...as well as

13 I know how.

14 BENNY WAMPLER: We're going to give them a chance to

15 respond and---.

16 LINDA SHORT: That's fine.

17 BENNY WAMPLER: ---and the Board will have a chance

18 to ask any questions they have. Mr. Swartz, I'm going to ask

19 you to respond to the survey dispute. You said you had your

20 surveyor here.

21 MARK SWARTZ: Yeah. I'd kind of like to be done

22 with everybody if you don't mind. Is that it? I'd like to

23 know, you know...I don't want to have to put the surveyor on

24

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1 twice.

2 CLYDE KING: They've got a right to speak anytime, I
3 guess.

4 LINDA SHORT: Yes. I would like to reserve that
5 right, please.

6 VERN SHORT: No, we're not finished yet.

7 LINDA SHORT: You can go ahead and put your surveyor
8 on. That's fine.

9 BENNY WAMPLER: Are you asking is there another land
10 dispute issue, survey issue?

11 MARK SWARTZ: Right, because I heard---.

12 BENNY WAMPLER: Is there any---?

13 MARK SWARTZ: ---that they're claiming, or at least
14 some of them are claiming the well in two units may be on
15 their land. Is it one? Is it two?

16 VERN SHORT: Is that hearsay, right? Did you hear
17 this?

18 SANDRA RIGGS: What you just said?

19 MARK SWARTZ: I'm sitting here listening to you.

20 SANDRA RIGGS: What is your testimony with regard to
21 what is on your property?

22 VERN SHORT: One dispute on the land of the property
23 and that's BB-38.

24

--

1 BENNY WAMPLER: BB-38.

2 MARK SWARTZ: Okay.

3 SANDRA RIGGS: Okay.

4 VERN SHORT: On the land property.

5 BENNY WAMPLER: Right.

6 LINDA SHORT: I'm sorry. Let me make a

7 clarification on that. BB-37 is down below a spring that we

8 have. It is like a spring water. We cannot drink it. It is

9 a fresh water spring. Okay, we can't drink it. We don't

10 drink. So, we use it to flush toilets and to take a bath,

11 okay. That's all we've had these last few days. But it's

12 not drinkable. You cannot use it.

13 SANDRA RIGGS: Let me...let me explain something.

14 One of the objections that you've raised is that they did not

15 have the right to enter upon your property to put these

16 wells. What they're asking you is which wells, or what entry

17 are you claiming that they have done that is on your

18 property? Which of the three units are you claiming they

19 entered on your surface and did something?

20 LINDA SHORT: BB-38.

21 SANDRA RIGGS: And that's the only one we're talking

22 about is BB-38?

23 VERN SHORT: On the land dispute.

24

1 LINDA SHORT: Well, it is on the property surface.

2 SANDRA RIGGS: Now, we're not talking about water
3 here. That's a permitting issue. We're talking about---.

4 LINDA SHORT: Surface rights.

5 SANDRA RIGGS: ---drilling of the wells. BB-38 is
6 the unit that there is a dispute as to whether or not the
7 well is or is not on your property. Is that where we are?

8 VERN SHORT: That's right.

9 LINDA SHORT: Right.

10 MR. PRESLEY: Right. You're correct.

11 LINDA SHORT: Right, Sandy.

12

13 LESLIE K. ARRINGTON

14 DIRECT EXAMINATION

15 QUESTIONS BY MR. SWARTZ:

16 Q. Mr. Arrington, whose tract is that well
17 location on?

18 A. Commonwealth Coal Company.

19 Q. What have you done to address the complaints
20 that Ms. Short has made with regard to her argument that that
21 well is to be location on surface that she owns?

22 A. Well, there has been an ongoing dispute
23 there between Commonwealth Coal Company, the Shorts, on, you

24

--

1 know, exactly what is the line there. Commonwealth---.

2 Q. I want to know what you did.

3 A. What we've done, we acquired a copy of
4 Commonwealth Coal Company's surveyed property line that was
5 just recently surveyed and that's what you see as the solid
6 line of the map. Initially, our preliminary drafting maps,
7 we went out and staked the well being Commonwealth Coal
8 Company's surface and that's how that well was staked.

9 Q. Has this line that's shown...lets stay in
10 unit BB-38. There's a line that runs roughly...generally
11 east and west just above the well location. Do you see that?

12 A. Yes, it is.

13 Q. And is that the line that was of interest to
14 you from a survey standpoint?

15 A. It was.

16 Q. Who did this survey?

17 A. That was done by D. R. Price and the person
18 that worked on it was Roger Boyd.

19 Q. Okay. Is he here today?

20 A. Yes, he is.

21 MARK SWARTZ: Mr. Boyd, do you want come up here
22 with your file?

23 (Mr. Boyd approaches and is duly sworn.)

24

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1

2

ROGER BOYD

3 having been duly sworn, was examined and testified as
4 follows:

5

DIRECT EXAMINATION

6 QUESTIONS BY MR. SWARTZ:

7

Q. Could you state your name for me?

8

A. My name is Roger Boyd.

9

Q. Who do you work for?

10

A. I work for D. R. Price Engineering and Land

11 Surveying at Swords Creek.

12

Q. What do you do for them?

13

A. I'm a registered land surveyor. I survey

14 boundaries, surface boundaries, mineral boundaries.

15

Q. How long have you been doing that?

16

A. I've been surveying since 1977.

17

Q. When you say registered, does that mean

18 registered with the Commonwealth of Virginia?

19

A. I'm registered with the Commonwealth of

20 Virginia and State of Tennessee as a registered land

21 surveyor.

22

Q. And did you, in fact, have occasion to

23 survey the line that's depicted on the plat in BB-38?

24

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1 A. I did.

2 Q. It might be helpful...I mean, you can do
3 whatever you like. If you want to unfold the surveying and
4 the other maps and lay it on the table so the Board can sort
5 of see it. But what I'd like you to do is tell the Board
6 what you did and what you found in the Courthouse, in the tax
7 department and out in the field.

8 A. We were contacted by Consolidated to do
9 a...or Commonwealth, I'm sorry, to do a survey on a tract
10 known as the J. M. Hill tract and we were furnished a title
11 report by an attorney, Altizer & White in Tazewell County,
12 that went all the way back to the 1800s. They began their
13 title search there.

14 The property was originally 105 acres. It had been
15 surveyed in 1827. It had been resurveyed in 1873 and then
16 surveyed again in 1908 when Commonwealth Coal Corporation
17 purchased the property. All three surveys agree. They were
18 documented and on record, on file at the Courthouse, and even
19 in the tax office they held their same shape and size, which
20 is unusual but they were there. And so---.

21 Q. Let me interrupt you for just a minute. So,
22 the tax map that the properties are currently being taxed on
23 actually track the 1827, 1873 and 1908 surveys with regard to
24

1 the line we're concerned with?

2 A. Yeah, they hold the same shape and form.

3 Q. Do you have that tax map with you today?

4 A. I do.

5 Q. Okay. I'll pass it up to you in a moment.

6 But the line that we're concerned about, the plat and the

7 line the Shorts are complaining about today, is this line

8 right here in BB-38, correct?

9 A. That's correct.

10 Q. And on the tax map copy that you brought

11 with you, where is that line shown?

12 A. This is the same line here.

13 Q. Okay. And it's a straight line in tax

14 department, correct?

15 A. That's correct.

16 Q. And did you obtain this copy yourself?

17 A. I did.

18 Q. And is it map 64, tax maps?

19 A. It is.

20 Q. Just for purposes of comparison, if we look

21 at the survey, or plat, that the Shorts brought with them

22 this morning, is the line at issue...where is the line that

23 we're talking about today?

24

1 A. On Mr. Ribble's survey, he shows a line
2 starting out here and coming and bending. This line since
3 1873 has always been a straight line.

4 Q. So, basically, from this point right
5 here---?

6 A. That's correct.

7 Q. ---the surveys that you were able to
8 identify as the tax map would have all indicated that that
9 line would just continue on straight, correct?

10 A. Well, basically from...the bend is here, but
11 actually it should go straight through here this way and this
12 should come out. But yes, that's correct.

13 Q. Well, basically what he has done is he has
14 taken a straight line and bent it?

15 A. That's correct.

16 Q. And are you aware of any basis for that
17 bend?

18 A. No. I had the benefit of the title report.
19 I had the benefit of a 1908 survey and the line has always
20 called for a straight line across ridges and valleys to two
21 Gums.

22 Q. Do you have the 1908 survey with you?

23 A. Yes, I do.

24

1 Q. Get that---.

2 A. This is a survey that was prepared by Fox &
3 Peck Engineering at Bluefield, West Virginia. It was
4 prepared for Commonwealth Coal Corporation. The deeds to
5 Commonwealth when they purchased the property were written
6 from this survey. When you go back to the Courthouse and
7 pull the deeds for Commonwealth's purchase of these tracts,
8 you will find that they are verbatim with the survey.

9 Q. And have you outlined the line that's at
10 issue on this 1908 map in green?

11 A. I have.

12 Q. Is it the south 82 36 minutes, west 200 or
13 2,851 feet line?

14 A. That's correct.

15 Q. And does that line in the same position and
16 location as the tax map that you've just passed around?

17 A. As best as I can ascertain, yes.

18 Q. It certainly looks like it, doesn't it?

19 A. It's the same shape.

20 Q. And were you able to get information in the
21 Courthouse with regard to the 1827 and 1873 surveys?

22 A. Yes.

23 Q. And were you able to review that information
24

1 in relation to the 1908 survey and the tax map that you're
2 passing around?

3 A. Yes. The---.

4 Q. And how did they compare?

5 A. The original survey called, for instance,
6 two Chest...or three Chestnuts and the next survey...one
7 survey was done like in 1823 or 1873 and then the next survey
8 that came along for the same corners; however, it would call
9 for two Chestnuts instead of three, possibly one gone. When
10 it called for the two Black Gums, it called for two Black Gum
11 stumps indicating that...instead of the two Black Gums being
12 there, the stumps were only left at that time and basically
13 the angles and distances were verbatim.

14 Q. Did you go out in the field to examine on
15 the ground what you could find to try and locate the line
16 that's being argued about?

17 A. Yes.

18 Q. I just want to know if you went out there.

19 A. Yes.

20 Q. Okay. Did you talk to Mr. Ribble, I guess
21 it is?

22 A. Yes, I talked to James Ribble.

23 Q. Okay.

24

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1 A. I mean, this other surveyor.

2 Q. To the other surveyor. Did you talk to him

3 about how he came to draw his line where he did, just whether

4 or not you asked him about that?

5 A. We had some conversation. As to whether he

6 explicitly explained what he did to me, he did not; however,

7 I can see what he did.

8 Q. Okay. Now, did you also talk to any of the

9 Short family when you were out on the ground?

10 A. Yes. I talked to Burnett Short and I talked

11 to Ruth Short.

12 Q. Did you obtain any information from Burnett

13 Short that was of interest to you in doing your survey?

14 A. Mr. Short walked up to the northwest corner

15 of the property with me on a high knob. The old deeds always

16 called for a point on a high knob.

17 Q. Why don't you take your survey and lay it

18 out here, or get a little closer and hold it up and point out

19 what you're talking about to the Board.

20 A. This is the survey that we did. This being

21 the line in question down here.

22 Q. You might want to get---.

23 BENNY WAMPLER: Turn that mike.

24

1 A. Originally, Mr. Short and I walked out to
2 the northwest corner and the original survey all the way back
3 to the 1900s called for a Chestnut and two Chestnut Oaks or
4 two Chestnuts and a Chestnut Oak. There was a pipe out here
5 on top of the high knob. There's no mistaking that corner.
6 It's the only high knob there.

7 Q. And the deed called for a high knob?

8 A. That's correct. And he pointed out the pipe
9 which we located and I think it was painted yellow and said
10 that his dad had put it in years ago. So, we located that
11 pipe. It pretty generally fit the description of the deed.

12 Q. Because it was on the high knob?

13 A. It was on a high knob and it was also by a
14 Chestnut stump, a Chestnut Oak stump. We then...I think
15 that's the only corner that Mr. Short went with me to, if I
16 recall correctly. We then proceeded to do the survey. We
17 asked the Short's permission to go on the property. They
18 said we could survey the property from the Commonwealth's
19 side but not to go on their property. So, what we did, we
20 stayed off of their property and shots that had to be taken
21 within their property, we did it by triangulation. You can
22 set up on an adjoining corner outside the property and shoot
23 from one direction and set up somewhere and shoot from

24

--

1 another direction and compute its location (inaudible).
2 Basically, we found that the property...the pipe that Mr.
3 Short had showed me agreed with another pipe we had found
4 1,200 feet away. It was also painted and marked yellow and
5 that was this line.

6 Q. Okay, that was this line and this corner,
7 right?

8 A. That's correct. So, from here to here
9 matched all the way, you know, the distance on the ground was
10 1257.02. The deed called for 1258. Amazingly close for a
11 survey that old.

12 LINDA SHORT: Excuse me. Can I interject there for
13 just a moment? Did Mr. Short tell you the truth when he
14 showed you the first point that you could go and do the
15 survey. Did he be truthful with you and you did find it to
16 be truthful? Did you think Mr. Short was telling you the
17 truth?

18 ROGER BOYD: I had no---.

19 LINDA SHORT: Did you show any indication that he
20 would lie to you about anything?

21 ROGER BOYD: No.

22 LINDA SHORT: Okay.

23 ROGER BOYD: No. I'm not calling him...all
24
~

1 I'm...I'm saying that the point Mr. Short showed me as to be
2 the first pointer after the numbers were in---.

3 LINDA SHORT: So, you took him to tell you the
4 truth?

5 ROGER ROSE: ---turned out to be the corner.

6 LINDA SHORT: Okay, he told you the truth?

7 ROGER BOYD: In this corner, absolutely.

8 LINDA SHORT: Yes. That's my point.

9 Q. Now, in addition to the distance being
10 amazingly similar from the two pipes that were painted
11 yellow, what...how did the...how does the course compare?

12 A. The bearings were within 30 minutes.

13 Q. Okay. Now, when we get down to this yellow
14 pipeline you found, what does the deed call from that point
15 and the survey calls in the 1908 survey from that point?

16 A. The 1908 survey called for a bearing of
17 South 82 36 west for a distance of 2,851 feet, crossing
18 valleys and hills to two Black Gums on a spur.

19 LINDA SHORT: Excuse me, Roger. Since you are
20 pointing out that straight point, would you please tell me
21 how many deeds call for a Chestnut that give that direct
22 point in those deeds? How many deeds have you reviewed that
23 calls for that point that we're talking about?

24

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1 ROGER BOYD: Every deed that was---.

2 LINDA SHORT: That Chestnut, that calls for that
3 chestnut? That does not make it a straight as you say. When
4 I talked to the Tazewell County Taxation Board---

5 MARK SWARTZ: Ma'am, you need to ask him a question
6 and not testify. He'd be happy to talk about the deeds---

7 BENNY WAMPLER: Ms. Short, we need to let him finish
8 testifying and then we'll let you ask, okay. You can ask
9 anything you need to ask.

10 Q. I guess what she was asking was for...well,
11 first let me ask you this, have you reviewed deeds and deed
12 descriptions to assist you?

13 A. Yes, we reviewed all the surveys since 1827,
14 1873, 1908 and basically they all call for a straight line
15 for some 1,2...or 2,850 some feet. There was no
16 discrepancies in any of the...from the original deed to the
17 conveyances.

18 Q. And did you review Short deeds as well?

19 A. We did.

20 Q. And would their property have been to the
21 north of the line we're talking about?

22 A. It would have had to have come to the line
23 of the property.

24

--

1 Q. I understand. Have you drawn on your plat
2 of survey the area that Mr. Ribble has the bend on?

3 A. Yes.

4 Q. You need to aim that better at the Board so
5 they can see that.

6 A. Mr. Ribble's survey had indicated this dark
7 blue line and he started up here on top of the mountain at
8 the road and came down to the hollow, down the creek, which
9 is now filled. He got that information from Knox Creek Coal
10 based on a conversation I had with him. And he went past the
11 boundary line to a roof bolt that he said was pointed out by
12 Mr. Burnett Short. And then from there he proceeded...I'm
13 sorry, to a pin and then he proceeded to a roof bolt that was
14 pointed out by Mr. Short, which put a bend in the line going
15 back to the corner. There's some 6 odd acres in here that is
16 between the deed line and the Ribble survey line.

17 Q. Okay. Of all this information that you
18 reviewed at the Courthouse, the three survey maps that you're
19 talking about, all of the deeds, both for surface and coal
20 and oil and gas, and the tax maps, did any information that
21 you came across at the Courthouse at all ever bend that line?

22 A. No.

23 Q. So, we're talking about 180 years that line
24

1 has been straight as far as the Courthouse records are
2 concerned?

3 A. The best I can ascertain, it has always been
4 a straight line. I found no documents other than Mr.
5 Ribble's survey that would have been in that line.

6 Q. Did you talk to Mr. Ribble about the basis
7 for his bend in the line?

8 A. I asked Mr....well, I told him that we had a
9 1908 survey, during one of our conversations, that showed
10 that line to be straight. He indicated to me---.

11 VERN SHORT: Excuse me, isn't the 1908---.

12 BENNY WAMPLER: Just let him finish.

13 LINDA SHORT: Just let him finish.

14 VERN SHORT: All right.

15 LINDA SHORT: Just let him finish.

16 A. He indicated to me that he wasn't aware of
17 that survey and he didn't have it and asked me if I mail it
18 to him, at which time I did. I mailed him a copy of it. And
19 I told him that he had his bent and that the preceding deeds
20 from 1908 previously always had the line straight. He did
21 not at the present time. So, he asked that I furnish him
22 with a copy of that, which I was glad to.

23 Q. Now, have you located the well on your BB-38

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1 well on your plat of survey as well, sir?

2 A. I located the proposed location of it, yes.

3 Q. Okay. And could you point to where that is?

4 A. Right here is the location of BB-38. This
5 blue line represents the property line, and we're showing the
6 well to be south of that line, which would be the
7 Commonwealth's property.

8 MAX LEWIS: How far south?

9 A. The actually distance of the proposed well
10 of BB-38 is northeast, or southwest, a 134.50 from the corner
11 of the property that James Ribble is claiming to be the line.
12 So, it's about a 100 feet...a 100 and some...a 120 feet
13 south of the property line.

14 MARK SWARTZ: I'd like to eventually mark this
15 exhibit, Mr. Chairman, as an Exhibit, since normally don't
16 use numbers, Exhibit One, which will be the plat of survey.
17 The other maps that I've given you this morning, I don't have
18 a copy I can leave with you. So, I'm going to have to copy
19 those and get them to you. But this I would like to denote
20 as Exhibit Number One. You can come around and have a seat.

21 Q. Sir, did you actually yourself prepare this
22 survey map?

23 A. I did.

24

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1 Q. And it has your seal, does it not?
2 A. It does.
3 Q. And your license number?
4 A. It does.
5 Q. And does this map accurately depict your
6 opinion as to the location of the 2,851 foot line?
7 A. It does.
8 Q. When you put this 2,851 foot line on the map
9 and on the ground, there was also a course for that line, was
10 there not?
11 A. There was.
12 Q. And how did the course that you came up with
13 compare to the deed course?
14 A. Well, the deed course called for south 82 36
15 west 2,851 feet. Our course came to be south 82 35 21 west,
16 which is only a difference of a few...30 seconds, which is
17 amazingly close.
18 Q. And the distance actually turned out to be
19 identical?
20 A. Well, what we did, we went on across the
21 mountain and all the way down and surveyed backwards in order
22 to establish the ending point here and the deed distance,
23 yes, was made to be identical.

24

--

1 Q. So, you came back the other direction and
2 were able to get it to agree---?
3 A. That's correct.
4 Q. ---is what you're saying?
5 A. We came from two different directions in
6 order to pinpoint that corner.
7 Q. Have you seen anything on the ground, in the
8 record room, in the tax assessor's office, that would cause
9 you to conclude that this line was ever bent as a matter of
10 record?
11 A. Nothing.
12 Q. And lastly, let me show you the plat that
13 was attached to the pooling application in BB-38 and ask you
14 whether or not it appears to you that this plat and the line
15 at issue generally compares well to the survey that you've
16 done?
17 A. In general, yes.
18 Q. It's not identical, but it's pretty close?
19 A. No, it's general.
20 Q. And you actually surveyed the proposed well
21 location to be a 134.50 feet from the property line?
22 A. That's right.
23 Q. South of that?
24

1 A. Yes.

2 MARK SWARTZ: That's all I have of this witness.

3 BENNY WAMPLER: Board, do you have questions right

4 now?

5 (No audible response.)

6 BENNY WAMPLER: You can go ahead and ask your

7 question. You had one about the---.

8 VERN SHORT: Yes. The 1908 survey that he talks

9 about, that was a coal severance deed.

10 LINDA SHORT: It was not a land survey deed.

11 VERN SHORT: Actually, as far as being, you know,

12 the land surface survey, that was not a surface survey. It

13 was just a coal severance is what it was. And, also, he says

14 about there never was a Chestnut listed, just down there at

15 that point, and then the James Hill tract that we're talking

16 about, see, he sold a proportion of that land to J. T. Lawson

17 and when he did that, he recognized...that's when he does

18 point out the Chestnut that we're talking about down here.

19 Mr. Boyd, he never did mention that, but it is around 1888 or

20 18...somewhere around there, in that deed when he sold that

21 parcel of land. But it does go down to a Chestnut right

22 there where James Ribble has a stake because he did sell

23 the...he sold off some of the property right there and it

24

1 does call for a Chestnut when he sold like a block around 30
2 some acres.

3 LINDA SHORT: I'd like to point out to the Board, we
4 have gone back and talked to Mr. James Ribble about his
5 survey. He also is a reputable surveyor. He also has a
6 registered license as Mr. Boyd. He also went by the deeds.

7 Let me make a point that when my husband pointed
8 out the line and the point as most sons and most fathers
9 know, they pass it on to their children what you own and what
10 you don't. You don't go and take somebody else's property.
11 It was passed on from generation to generation. Okay, like I
12 said, it has been in the family for a 100 years. We have not
13 ever had, or my father-in-law had never, ever surveyed the
14 property because there had never been a reason to.

15 Mr. Ribble was just picked out of a phone book, but
16 he turned out to be a reputable, honest man. He said he
17 followed the deeds. I questioned him, "Mr. Ribble, is there
18 any doubt in your mind that this deed does not call for a
19 Chestnut." My question to Mr. Boyd was, "Is there any deeds
20 that call for a Chestnut?" That was the question that I
21 asked. That was the only point. I'm not saying...all I can
22 say is what Mr. Ribble has told me. I am not an engineer. I
23 am not a surveyor. He has been honest and he told me

24

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1 honestly, he says, "Mrs. Short, you and your husband, as far
2 as I can understand, own the property." He said, "It is well
3 worth fighting for. Your father gave it to you." This is
4 his words. He was willing to come and testify. I was
5 willing to pay for that testimony. But I felt the Board
6 could look at the survey and know that I would tell you the
7 truth and I would be honest and speak the words that I know.
8 That's what he told me and he's a surveyor. He would not
9 have put his name and his license on the line just for this
10 little family, believe me. He's a very well, intelligent and
11 he has lots of business.

12 So, all I can say is what Mr. Ribble said that,"
13 You own the land, Mrs. Short?" So, what more can I do except
14 that you all look at it and you'll have to make your own
15 choice. They were able to put it back a 134 feet. Had it
16 not been back a 134 feet, the well site, there would have
17 never been a question. It's easy to get the gas and it's
18 easy to get the land.

19 Even on Mr. Boyd's own survey, he doesn't state
20 that it's Commonwealth's property. It states on there---.

21 VERN SHORT: It appears.

22 LINDA SHORT: ---that it possibly is.

23 VERN SHORT: It appears.

24

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1 LINDA SHORT: It appears to be. He can't even state
2 that it is. He just says that it appears to be. I can state
3 that it is mine because Mr. Ribble tells me so.

4 I want to appeal to the Board, you don't have to be
5 intelligent people to see what's happening here. We're small
6 people, but we're honest. I would tell you the truth. I
7 would not lie to you for a 134 feet. It has been in our
8 family for a 100 years.

9 It has distressed my husband. Punitive damages
10 need to be done. If he continues losing weight like this,
11 maybe we should do that.

12 I would ask Mr. Arrington, to plead with him, as a
13 representative of Consol Coal and Gas, to come to meet with
14 us to talk with us, to offer a proposal that would be decent
15 to the families, to Mr. Walt Short, Mr. Robert Rose who has
16 to haul his own water and suffer. I'm sure you all are tired
17 of hearing me talk.

18 BENNY WAMPLER: That's what we're here for.

19 VERN SHORT: Mr. Boyd, do you have the copy of that
20 deed of the...where Mr. James Hale sold it to J. T. Lawson
21 there?

22 ROGER BOYD: I do have in this file. It may take me
23 a few minutes to dig it out, but I've got a whole...I've got
24

1 chronological---.

2 MR. PRESLEY: Yeah, because it lists that Chestnut
3 from then on once he sells that portion of that property. He
4 lists as soon as he sold his first part of that back in
5 1800...it was either 1888 or 1883 or something like that and
6 ever since the deed was made, since then that Chestnut has
7 been in that deed from 1800s like you said all the way back
8 up to now.

9 BENNY WAMPLER: Well, obviously, you know, it's our
10 desire that you folks be able to work things out. Nothing
11 that we would do here can convey property rights, your
12 property to somebody else that they don't already own.
13 Nothing we do would do that.

14 VERN SHORT: Right.

15 BENNY WAMPLER: The dispute as far as the permitting
16 activity goes, would be whether or not you had standing to
17 object to the location on the surface.

18 LINDA SHORT: That was the only thing that we had
19 that was the property was ours and it, you know, most likely
20 will interfere with water. But she says that's...Sandy said
21 it's another issue that I'll take up with Mr. Wilson if it
22 happens.

23 BENNY WAMPLER: If it's within 700 foot of your well
24

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1 and there's damage, then it's presumed they did it and
2 they'll have to prove they didn't and take care of it.

3 LINDA SHORT: BB-36 has already done that.

4 BENNY WAMPLER: And that is in law, you know. So,
5 Mr. Wilson-.

6 LINDA SHORT: I also understand that Mr. Wilson, and
7 I will make this statement, that if a permit is issued here
8 today, that as far as coming onto the land, the land does
9 belong to this family and this family will fight for that
10 right. No trespassing shall be put on that land.

11 SANDRA RIGGS: The permit has already issued for
12 this well.

13 LINDA SHORT: Right. He---.

14 SANDRA RIGGS: This Board does not deal with
15 permitting issues.

16 LINDA SHORT: Right.

17 SANDRA RIGGS: All that we're here for today is to
18 talk about pooling of the gas.

19 LINDA SHORT: We object to that very strongly,
20 Sandy. We really do.

21 SANDRA RIGGS: So that...well, just so that we don't
22 mix apples and oranges here.

23 LINDA SHORT: Right. I understand.

24

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1 SANDRA RIGGS: The water issues are permitting
2 issues.

3 LINDA SHORT: Right.

4 SANDRA RIGGS: The right of entry are permitting
5 issues. The only issues that this Board is talking about
6 today is pooling of the gas to be produced out of that well
7 and who receives the royalties for it. Those are fairly
8 limited issues---.

9 VERN SHORT: Right.

10 SANDRA RIGGS: ---in the menu of things that you
11 want to talk about.

12 LINDA SHORT: I think Mr. Wilson had the right idea
13 that we negotiate and they get 50% and we get 50% which is
14 something that is negotiable with us.

15 SANDRA RIGGS: Now, that's the conflict between the
16 coal owner and the gas and oil owners. That's not with the
17 operator. That's...that's to resolve the conflicting claims.

18 LINDA SHORT: I guess, Sandy, we felt like this was
19 our last result, you know, coming to you all.

20 BENNY WAMPLER: Well, we understand that. We just
21 want to make sure you understand what our authority is and
22 what we're actually ruling on here today.

23 LINDA SHORT: Uh-huh.

24

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1 BENNY WAMPLER: We have a proposal from them to pool
2 the interest of those parties being impacted by the draining
3 of the gas from these three wells.

4 LINDA SHORT: Since we are the owners and we object
5 to that, what else more can we do? We object to that
6 pooling.

7 VERN SHORT: Because just like Walter said about
8 that lease, you know, they throw that down to you and say,
9 here you go. There's no signatures and no nothing here.
10 It's either sign it---.

11 LINDA SHORT: It's not signed.

12 VERN SHORT: Sign it or else. What is our rights
13 for that, I mean, after we do this? I mean, we have no
14 rights?

15 SANDRA RIGGS: Well, there's two things. They're
16 required to make you an offer.

17 VERN SHORT: Right.

18 SANDRA RIGGS: That is an offer, okay?

19 VERN SHORT: Uh-huh.

20 SANDRA RIGGS: If they can't reach an agreement with
21 you, that's why they're here. The Board will decide what the
22 compensation is going to be and that's what this Board is
23 sitting here to decide is what the compensation for the
24

1 royalty owners would be. So, the Board order replaces the
2 terms of that lease. The Board will establish the lease
3 terms as part of its...that's what this hearing is about
4 today is what that compensation---.

5 VERN SHORT: So, you all make the decision then,
6 right?

7 SANDRA RIGGS: Correct.

8 BENNY WAMPLER: It's actually made for us in law,
9 though.

10 SANDRA RIGGS: Well, to a---.

11 BENNY WAMPLER: The law stipulates what those...what
12 that decision can be.

13 VERN SHORT: Right. And that's the amount of
14 royalties and the amount---.

15 SANDRA RIGGS: Their testimony as to what the terms
16 should be was a \$1 per acre with a five year paid up term on
17 the bonus and 1/8 royalty. Those are the financial terms
18 that they...that they have testified to that they're asking
19 the Board to adopt as the compensation terms in exchange for
20 the pooling of the gas.

21 BENNY WAMPLER: But now when you...when...if the
22 Board issues an order granting this, then you will have three
23 options. Do you want to go through those?

24

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1 SANDRA RIGGS: Right. And this is what Mr. Wampler
2 is referring to about what the law says, the Board order
3 would track the statute. You have...you would have...and the
4 Board order would lay this out, you would have the right to
5 become their partner in the well in which event you would
6 take your proportionate share of the drilling unit times the
7 cost of the well and pay in your share of the cost at which
8 point you become a partner and that means that you in turn
9 get...share in your proportionate share of the 7/8s working
10 interest.

11 The next option is that you can elect to be
12 carried, which means you don't have to put any money up
13 front, but there's a penalty for not putting money up front
14 and they get to recover in the case of 200% or 300%,
15 depending on whether you're leased or unleased.

16 VERN SHORT: 200%.

17 SANDRA RIGGS: And then the third option is, or if
18 you do nothing, you will be deemed to have been leased by
19 virtue of the Board order and the compensation will be for
20 the 1/8 royalty as a royalty owner and not as a working
21 interest owner, which the other two options apply to, and
22 then that would be the up front bonus, plus a 1/8 royalty on
23 production for your proportionate part of the drilling unit.

24

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1 VERN SHORT: So, it doesn't matter...it has nothing
2 to do with the gas prices, has nothing to do with how much
3 gas that gets out...they pump out?

4 SANDRA RIGGS: Well, it does...it does to the extent
5 that...yeah, 1/8 of what is dictated by that flow of gas,
6 yes. It's 1/8 of the production.

7 BENNY WAMPLER: It will change as price changes.

8 VERN SHORT: And how is that metered?

9 SANDRA RIGGS: It's metered...well, Mr. Wilson can
10 probably explain to you better how they track production on
11 the well.

12 VERN SHORT: Do they have electronic meters on
13 there?

14 BOB WILSON: Each well is metered...the production
15 of each well is metered according to standard industry
16 practices through meters that are regularly tested often
17 times by independent parties in order to track production
18 from each individual well according to (inaudible).

19 SANDRA RIGGS: And production reports are put on
20 file with the Virginia Gas and Oil Board and are available
21 for inspection.

22 BOB WILSON: Excuse me. One thing that I might also
23 point out, in all of these options so long as the conflict
24

1 exists in ownership between the gas and oil owner and the
2 coal owner, any monies, whether they be working interest
3 monies or royalty monies, will go into escrow. So, until
4 that's settled, there would be no cash flow on any of those
5 scenarios.

6 BENNY WAMPLER: That's what a lot of parties do.
7 We're not...you know, we're not trying to tell you what to
8 do. A lot of parties do get with a co-owner and negotiate a
9 settlement and come to the Board and ask...if you've seen any
10 of that docketed or been here and heard any of that, we have
11 disbursed several hundred thousand dollars from escrow from
12 agreements like that.

13 WALTER SHORT: The property owners there, you've
14 still got...you don't have the options to do what you want to
15 do with that land or protect the way you want it. They come
16 in and give what they want and you've got to take whatever
17 the best offer that you can get out of it.

18 SANDRA RIGGS: That's the way the statute is
19 established. That's why it's called compulsory pooling.

20 WALTER SHORT: So, that's like...that's like a one
21 legged man at a butt kicking.

22 LINDA SHORT: That's the reason you try to get a
23 hold---.

24

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1 WALTER SHORT: You don't have much to stand on.

2 LINDA SHORT: ---of a legislator who's going to
3 listen to you. Mark Warner is very interested. Of course,
4 I'm not...I'm not the lobbyist that the gas company has, but
5 I certainly can make appeals.

6 I was going to ask the Board since we're just
7 getting ready to close, on this hydrogen sulfite that is
8 produced by oil and gas drilling. What is the danger to the
9 community and to our families if something happens on that?
10 Do you all know?

11 BENNY WAMPLER: Mr. Wilson?

12 BOB WILSON: Are you speaking in terms of the
13 reference to hydrogen sulfite in our regulation?

14 LINDA SHORT: What happens to families like my
15 little family who's going to be like within 500 feet of a
16 well as far as nerve damage, or destroying any type of nerve
17 or, you know, my family? What protection does my family
18 need?

19 BOB WILSON: Historically, hydrogen sulfite gas in
20 Virginia has only been found in very deep limestone reservoir
21 (inaudible) usually what's referred to as a oradabition
22 system, the deeper, none of which is being penetrated in the
23 area of your interest there. Coalbed wells do not
24

1 carry...characteristically carry hydrogen sulfite gas. There
2 are, and I'm not exactly sure where you're coming from, there
3 are some natural emissions of hydrogen sulfite gas. As a
4 matter of a fact, there was a study done not too long ago in
5 which it was determined that yes there are some natural
6 emissions from the outcrops of the area there and certainly
7 (inaudible) danger to that. But there is none for use in
8 association with coalbed methane.

9 LINDA SHORT: I notice there's a lot of chronic
10 lung...lung damage in our area and lot of the people are
11 retired coal miners. So, when I read this report, I was
12 really concerned about the danger to families who live within
13 500 feet about the hydrogen sulfite, and suppose we did have
14 an accident, you know, what could happen, because this
15 investigation that I looked at shows that there is damage
16 that can happen to families and my family is going to be 500
17 feet away.

18 BOB WILSON: If---.

19 LINDA SHORT: So, we're frightened of that idea. My
20 husband already has a chronic lung disease. He already has a
21 nervous disorder. Any more exposure, what would I have left?

22 BOB WILSON: I think hydrogen sulfite gas produced
23 in association with coalbed methane is one thing that you can
24

1 not be concerned with.

2 LINDA SHORT: What about a whole house blowing up?

3 Can I be concerned about that?

4 BOB WILSON: A what?

5 LINDA SHORT: A whole house being blowed up, can I

6 be concerned about that?

7 BOB WILSON: I would be.

8 LINDA SHORT: I would be, too. It happened on 618.

9 Gas does get in wells and it does blow up people's homes and

10 it does blow up your bathroom and it can kill you.

11 VERN SHORT: Now, back to the force pooling, you all

12 make a decision today or whatever?

13 BENNY WAMPLER: Yes.

14 VERN SHORT: Okay, if you give them...which the

15 permit has already been done, correct? So, they will be able

16 to come across our property and drill this well?

17 LINDA SHORT: No, no. Not until that issue is

18 settled with Mr. Arrington.

19 SANDRA RIGGS: Can pooling...compulsory pooling

20 orders do not grant rights of entry on your property. That

21 is...that is a civil dispute that you all have going with

22 regard to where that boundary line is. The way it would

23 impact on your...well, it could impact on...in two ways.

24

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1 One, is whether or not they are entering on your property
2 without your permission, which in common law is called a
3 trespass action, okay? The second way would be the
4 percentage interest you have in the drilling unit, obviously
5 if the line changes, it changes the percentage of royalty
6 that you would be entitled to.

7 So, it could impact in two ways as I see it. One
8 would be the right of entry issue. The other is your
9 percentage interest in the drilling unit, which in turn then
10 controls how much of the royalty you get, more or less,
11 depending on whether you've got more land in the drilling
12 unit or less land in the drilling unit.

13 VERN SHORT: And who determines that percentage?

14 SANDRA RIGGS: That percentage is a direct function
15 of the number of acres you have related to the 80 acre
16 drilling unit. It's a factor. I mean, it's a mathematical
17 calculation. The more acres you have the greater, the
18 percentage you have in the drilling unit.

19 BENNY WAMPLER: Yeah, if you went to the Exhibit E,
20 for example, where they list the individuals and the acreage
21 and the percentages, that's, here again, how you would apply
22 that.

23 VERN SHORT: Okay. We was looking at that and, you
24

1 know, like our plat says 57 acres. I guess that's what
2 confused me because they had it broke down like 29 and so
3 many acres. Like I only like .19 acres. According to, you
4 know, my deed or may tax map it's like 0.66 acres. That's
5 what---.

6 BENNY WAMPLER: Your percentage of acreage within
7 the unit.

8 SANDRA RIGGS: Within the unit.

9 BENNY WAMPLER: Your tract within that unit, okay.

10 VERN SHORT: Within the 80 acres?

11 SANDRA RIGGS: Right.

12 BENNY WAMPLER: Within that 80 acre unit. So,
13 that's the way that would---.

14 VERN SHORT: Okay, that's what---.

15 BENNY WAMPLER: Just like slices of pie.

16 VERN SHORT: Yeah.

17 BENNY WAMPLER: Okay?

18 VERN SHORT: Okay. Which pie?

19 BENNY WAMPLER: The whole law behind the escrow
20 provision is to actually protect your interest so that if
21 there is any adjustment or anything like that, that that
22 could be corrected at any point in time.

23 LINDA SHORT: Has that law...it has not been ruled
24

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1 on yet, has it?

2 BENNY WAMPLER: As to the constitutionality?

3 LINDA SHORT: The escrow account, it has not been
4 ruled on yet as far as the dividends going to the gas owners;
5 it's still up in the air and it hasn't been ruled on yet,
6 right?

7 SANDRA RIGGS: Well---.

8 BENNY WAMPLER: It has in other states, not
9 Virginia.

10 SANDRA RIGGS: There has never been a challenge to
11 escrowing, per se. If the question is, who owns the gas,
12 whether, it's coal or gas and oil, that issue has not been
13 ruled upon in Virginia.

14 BENNY WAMPLER: Right.

15 SANDRA RIGGS: Which is why there is an escrow to
16 allow the production to occur while that debate continues.

17 VERN SHORT: Like Mr. Short here now, his...that gas
18 well is close to his property and it has already been there
19 and it has already been sunk. Now, what does he do now?

20 SANDRA RIGGS: Is he in the drilling unit? Under
21 the old rule of capture, you could go in and drill a well on
22 your property and take out as much gas as you wanted to take
23 and not pay anybody but the person whose property you were

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1 on, okay?

2 Under the protection of correlative rights, what
3 that...what that says is that this Board is given the task of
4 coming up with a scheme that assures that everybody gets
5 their proportionate share of the compensation from that
6 production. Now, what the Board did is it adopted field
7 rules, and in this case, it's the Oakwood Field Rules. And
8 where they used to have circular drilling units where the
9 circles would butt up to each other, you would have large
10 areas where...that weren't in anybody's drilling unit and
11 those people didn't get any compensation. So, by adopting
12 the square drilling units everybody...they butt up to each
13 other on every side and everybody is assured of being within
14 a drilling unit so that they can get compensation.

15 Now, that's...there is a difference between
16 receiving royalties if you're within a drilling unit and the
17 issue that you seem to have and that is whether or not they
18 have the right to locate the well on your surface. This
19 Board is not dealing with surface issues. This Board is
20 dealing with allocating royalties to everybody within the
21 drilling unit in a fair way consistent with the field rules.

22 BENNY WAMPLER: We're trying to make sure we answer
23 your questions the best we can before we make a decision

24

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1 here.

2 (Board members confer among themselves.)

3 CLYDE KING: Mr. Chairman, is the well in
4 production?

5 LINDA SHORT: No, sir.

6 CLYDE KING: Has it been drilled? It has been.

7 SANDRA RIGGS: Has not.

8 MARK SWARTZ: Has not. The permit was just issued
9 on the 22nd of June.

10 CLYDE KING: Then when did you have this mud in your
11 well?

12 LINDA SHORT: The BB-36 has been drilled and there
13 was an explosion like...I think they call that fracture....
14 fracturing.

15 CLYDE KING: Fracing.

16 LINDA SHORT: Fracing. Some days ago.

17 VERN SHORT: BB-36 has been drilled. But 38 and 37
18 has not.

19 LINDA SHORT: I'm like in a center location.
20 There's BB-36, BB-37 and BB-38.

21 BENNY WAMPLER: That's the one you just mentioned
22 to Mr. Wilson this morning about, right? He'll investigate
23 that.

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1 LINDA SHORT: Yes, sir. I brought him a bottle of
2 fresh water this morning. I think he'll enjoy it today.

3 BENNY WAMPLER: Okay. All right. Any questions
4 from members of the Board?

5 (No audible response.)

6 MARK SWARTZ: I would just like to make one comment.
7 You know, we could come over here for these pooling hearings
8 and take the position that title is not an issue. But I feel
9 like we have an obligation to demonstrate to you that we hear
10 complaints and we go out to assess, you know, whether or not
11 we have made some mistake, whether our title information is
12 good, bad or indifferent. We have spent a lot of time on
13 this. But we spent a lot of time on all of these units and
14 we have, you know, had a surveyor go out in the field. We've
15 had Mr. Altizer spend a lot of additional time looking at the
16 title, looking at the deeds. We are, as we sit here, firmly
17 convinced that this well is not on their property. They, as
18 they sit here, are firmly convinced that this well is on
19 their property. You know, we're going...we're not
20 necessarily going to get this issue resolved in front of you
21 all. But, you know, I do want you to understand and that's
22 why we had our surveyor come in this morning. That's why we
23 spent the time on the maps and so on and so forth. You know,
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1 we don't consider it a laughing matter or silly or whatever.
2 I mean, if somebody tells us they think we're on their
3 surface, we take that seriously. You know, trespass is not a
4 joke, and you know, we have done our work. We've done our
5 homework. We may be in Court, you know, in the future.
6 Unfortunately, we may or we may not. But, you know, we are,
7 as we sit here today, firmly convinced that we have...we
8 noticed that permit properly. That we've got the property
9 lines right and we're going to have...I guess, we're going to
10 have a continuing argument. I wish that Mr. Ribble had been
11 here this morning. I wish that he could have shown us some
12 deed or document that he contented, you know, he was relying
13 on. We are completely unaware of anything of record at all
14 that bends this line.

15 With that said, I would close by saying, we do take
16 our obligations seriously. We do need to know where property
17 lines are. When we have complaints, we consider them.
18 Unfortunately for all of us, you know, people get pretty
19 angry about this kind of stuff. You know, when Terry Owens
20 was out and offering them a lease, they were very unhappy
21 with the whole process. This morning, you know, we heard him
22 described as a stupid man. Well, you know, he didn't mean to
23 be. You know, he's trying to do his job and present a lease.

24

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1 If they have a counter proposal, you know, they've got our
2 offer. They've got a counter proposal. The fact that we're
3 here today doesn't mean we're going to stop considering.

4 So, you know, if there is some other proposal, the
5 fact that a pooling order may or may not be entered doesn't
6 affect that. But we take this seriously. You know, we're
7 sorry that we can't make everybody happy all of the time.
8 But we do our due diligence as best we possibly can when we
9 have complaints. That would be all I would add.

10 BENNY WAMPLER: We're going to note for the record
11 that there's a property dispute here and that will be a part
12 of our...any decision that we make. I would encourage Consol
13 to continue to actually sit down and talk with these folks
14 and hopefully you can work something out. That would be the
15 optimum position we could all be in.

16 MAX LEWIS: I think that's the best thing.

17 BENNY WAMPLER: I think obviously---.

18 MARK SWARTZ: You know, part of our---.

19 BENNY WAMPLER: You know, you hit...a lot of times,
20 you know, you can have personality disputes with one
21 individual. Perhaps another individual can go in and sit
22 down and talk and you can work things out and perhaps you
23 can't.

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1 MARK SWARTZ: Part of the problem too is, you know,
2 Commonwealth is the owner. I mean, we don't really own it
3 and we can't...throw in the towel on their boundary. But,
4 you know, I'm sure that we could talk to them as well. But
5 certainly in terms of leasing and the gas interest and so
6 forth, you know, we're certainly are in a position to talk
7 about that and if there's a counter proposal, we'll...you
8 know, we'll entertain it.

9 WALTER SHORT: The remark I made a while ago, I felt
10 like a one legged man in a butt contest kicking. I wasn't
11 referring to you guys. It's a statute of law you've got to
12 go by, you know.

13 CLYDE KING: Too bad.

14 LINDA SHORT: I would like to make one more note,
15 please. Mr. Boyd has all the deeds. I'm sure that if we
16 searched hard enough for those deeds you're going to find
17 that Chestnut that's called for. And I would make one
18 statement, when my husband showed Mr. Ribble the point
19 that Mr. Boyd referred to, he told him as honest and as
20 truthfully as he knew because it was passed down from father
21 to son, to father to son, for a 100 years. And that has been
22 the way it has been for a 100 years.

23 BENNY WAMPLER: I'm sure he did. I don't think any
24

1 of us have any doubt about that. It will all ride on what's
2 filed in the Courthouse as you well know, at one point in
3 time. Hopefully, you can work it out without having to go
4 through the system to do that.

5 LINDA SHORT: When I went to the Courthouse and
6 talked to the people, I asked her, well, is this a survey.
7 She said, this is a straight mark that we put on there for
8 tax purposes. I pay tax on 57 acres.

9 BENNY WAMPLER: We understand that. Any other
10 questions from members of the Board?

11 (No audible response.)

12 BENNY WAMPLER: Is there a motion?

13 MAX LEWIS: I'd like to see all of you get together
14 and try to work this out between yourselves.

15 CLYDE KING: Yeah, I would, too.

16 LINDA SHORT: I appreciate that comment. Thank you
17 very much.

18 CLYDE KING: Is it in order for us to delay this
19 for...until our next meeting, Mr. Chairman, to see if the
20 parties can get together?

21 BENNY WAMPLER: Well, if there's...if there's
22 questions here that the Board has a reason to continue it,
23 you can certainly...we can continue it.

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1 CLYDE KING: I'm concerned, and I so move that
2 motion that we delay it until the next meeting.

3 MAX LEWIS: I second it.

4 BENNY WAMPLER: Any further discussions?

5 MASON BRENT: I think on the discussion, I'd have
6 to...where I share everybody's concerns here and wish we
7 could, you know, get this boundary line dispute settled, I'm
8 not sure, Mr. King, I understand how the resolution of the
9 line is going to impact the pooling order.

10 CLYDE KING: Well, there's just so many questions
11 that I've had in hearing both parties that I don't feel good
12 about making a decision today. I would just like to have it
13 more clear in my mind exactly where everybody is. It bothers
14 me that somebody goes to church and comes home and there's
15 mud in their water and it also bothers me that people come in
16 and say they can come in your property without any
17 permission.

18 MASON BRENT: I've heard a lot of things that bother
19 me; and the water sitting over there obviously being one of
20 them. On the one hand, I kind of wish that was under our
21 purview so we could take some action. Unfortunately, it's
22 not part of our purview. One of the hardest things I find in
23 my job on this Board when I hear of situations like this,

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1 which we hear occasionally, is trying to remind myself, you
2 know, legally there's nothing I can do about that. I have to
3 keep my focus just on the issue that's before us. What's
4 here today is the pooling orders as Mr. Wampler pointed out
5 and Ms. Riggs pointed out earlier. I'm trying my best to
6 make sure that I stay focused on what we're suppose to be
7 doing here today, and, you know, that's why I just have a
8 difficult time understanding how continuing this will impact
9 a decision on our pooling order.

10 CLYDE KING: Well, of course, that's what we can
11 both move. But I just feel like we need to see if both
12 parties can get together on the situation.

13 BENNY WAMPLER: Okay, I have a motion and a second
14 on continuation. All in favor, signify by saying yes.

15 MAX LEWIS AND CLYDE KING: Yes.

16 BENNY WAMPLER: Oppose say no.

17 MASON BRENT, BENNY WAMPLER and RICHARD GILLIAM: No.

18 BENNY WAMPLER: It does not carry. Is there a
19 motion, another motion?

20 MASON BRENT: And, Mr. Chairman, referring back to
21 my earlier discussion, as difficult as it is to do it, I
22 think this Board is obligated, and I so move, that we grant
23 the pooling applications before us here this morning.

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1 RICHARD GILLIAM: I second that.

2 BENNY WAMPLER: We have a motion and second. Any
3 further discussions?

4 (No audible response.)

5 BENNY WAMPLER: All in favor, signify by saying yes.

6 MASON BRENT, BENNY WAMPLER and RICHARD GILLIAM:
7 Yes.

8 BENNY WAMPLER: Opposed, say no.

9 MAX LEWIS AND CLYDE KING: No.

10 BENNY WAMPLER: Motion carries three to two. Thank
11 you very much. Do you need a five minute recess? Let's take
12 a five minute break.

13 (Break. During the break Mr. Swartz asked that the
14 survey by Mr. Roger Boyd be marked as an exhibit and placed
15 with the record.)

16 BENNY WAMPLER: Okay, the next item on the agenda is
17 a petition from Equitable Production Company for a well
18 location exception for proposed well V-4041; and we'd ask the
19 parties that wish to address the Board in this matter to come
20 forward at this time.

21 JIM KISER: Jim Kiser on behalf of Equitable
22 Production Company. Our witness in this matter will be Mr.
23 Don Hall. I'd ask that he be sworn at this time.

24

1 (Witness is duly sworn.)

2 BENNY WAMPLER: The record will show that there are

3 no others. You may proceed. Do we need to call both of

4 them.

5 JIM KISER: We probably could.

6 DON HALL: Yeah, they're basically the same thing.

7 JIM KISER: Yeah.

8 BENNY WAMPLER: I'll go ahead and call the next item

9 on the agenda, docket number VGOB-01-07/17-0905. The parties

10 that wish to address the Board, come forward at this time.

11 JIM KISER: Again, Jim Kiser on behalf of Equitable

12 Production Company and Don Hall will also our witness in this

13 matter.

14 (Mr. Hall distributes exhibits.)

15 JIM KISER: In a lot of the testimony, we can

16 basically consolidate these, I guess. A lot of the testimony

17 will be the same. Two conventional wells that we plan to

18 drill. I think there's one existing well in the immediate

19 area and then four proposed wells, is that correct?

20 DON HALL: Well, with permit applications.

21 JIM KISER: Right.

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DON HALL

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. KISER:

Q. Mr. Hall, could you state your name for the record, who you're employed by and in what capacity?

A. Don Hall with Equitable Production as district landman.

Q. And do your responsibilities include the land involved in the unit for both well V-4041 and well V-4043?

A. Yes.

Q. Okay, I don't want to get you confused. We're going to kind of---

BENNY WAMPLER: I wasn't trying to call them to confuse him.

JIM KISER: Oh, I know.

BENNY WAMPLER: I just thought since one was offset to the other.

JIM KISER: Yeah. Yeah. I think we can handle it.

BENNY WAMPLER: Okay.

Q. And you're familiar with the applications

1 that we submitted seeking location exceptions for both 4041
2 and 4043?

3 A. Yes.

4 Q. And have all interested parties for both
5 wells been notified as required by Section 4(B) of the
6 Virginia Gas and Oil Board Regulations?

7 A. They have.

8 Q. Okay, now first on 4041, would you indicate
9 for the Board the ownership of the oil and gas underlying
10 that unit?

11 A. 4041 is a 100% Hagen Estates.

12 Q. Okay. Now, on 4043, would you indicate the
13 ownership of the oil and gas underlying that unit?

14 A. The Hagen Estate owns 70.74% and Penn
15 Virginia Oil and Gas Corporation owns 29.26%.

16 Q. Okay. Now, does Equitable have the right to
17 operate any and all reciprocal wells?

18 A. Yes, we do.

19 Q. And you actually have several other permits
20 that have been issued in the area?

21 A. Yes.

22 Q. Okay. So, there are no correlative rights
23 issues?

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1 A. No.

2 Q. Okay. Now, in conjunction with the exhibits
3 that you've prepared, and they're two separate exhibits, one
4 for each well, or one for each matter before the Board. Both
5 of these wells, in fact, all of these proposed wells are on
6 Jefferson National Forest surface, is that correct?

7 A. That's correct.

8 Q. Okay. And using your exhibits, explain for
9 the Board why we've had to come here today to seek these
10 exceptions.

11 A. Well, first of all 41...as Benny said, 4041
12 and 4043 are exceptions to each other as well as some other
13 wells. Both of these wells, they're located on the Jefferson
14 National Forest. They're South of Coeburn and they're on
15 U. S. Forest Service surface. All locations in a forest are
16 subject to an environmental impact study and the locations
17 are chosen based on the review...on the review of the study
18 and these locations were chosen by the representatives of the
19 forest service as locations that meet the parameters of the
20 VIS.

21 Q. Okay, now, in the event that these location
22 exceptions were not granted, would you project the estimated
23 loss of production or reserves resulting in waste for both the
24

1 wells?

2 A. Both the wells would be 400,000,000 cubic
3 feet.

4 Q. So, that's our estimate of the life of the
5 reserves for both of these wells?

6 A. That's correct.

7 Q. Okay, now, the total depth for 4041 would be
8 4,054 feet, is that correct?

9 A. That's correct.

10 Q. And that accurately reflects what's
11 contained in the permit application?

12 A. Yes, it does.

13 Q. And the total depth for well 4043 would be
14 3,992 feet, is that correct?

15 A. That's correct.

16 Q. Okay, and that would...that's accurately
17 reflected in the permit application. And these depths will
18 both be sufficient to penetrate and test any common sources
19 as supplied in the subject formations included in the permit
20 applications?

21 A. They will.

22 Q. And are you requesting that both these
23 location exceptions cover conventional gas reserves to
24

1 include the designated formations as contained in the permit
2 application from the surface to the total depth drilled?

3 A. Yes.

4 Q. And in your opinion, would the granting of
5 both of these location exceptions be in the best interest of
6 preventing waste and protecting correlative rights and
7 maximizing recovery...the recovery of gas reserves underlying
8 the units for both V-4041 and V-4043?

9 A. Yes.

10 JIM KISER: Nothing further of this witness at this
11 time, Mr. Chairman.

12 BENNY WAMPLER: Any questions from members of the
13 Board?

14 (No audible response.)

15 BENNY WAMPLER: Do you have anything further?

16 JIM KISER: We'd ask that both applications be
17 approved as submitted.

18 CLYDE KING: So moved, Mr. Chairman.

19 BENNY WAMPLER: I have motion. Is there a second?

20 MASON BRENT: Second.

21 BENNY WAMPLER: Second. Any further discussion?

22 (No audible response.)

23 BENNY WAMPLER: All in favor, signify by saying yes.

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1 (All members signify yes.)

2 BENNY WAMPLER: Opposed, say no.

3 (No audible response.)

4 BENNY WAMPLER: You have approval. Thank you.

5 DON HALL: Thank you.

6 BENNY WAMPLER: Bob, do you have any business?

7 BOB WILSON: Yes. The quarterly report of the
8 escrow agent, I will pass down the line here so you'll have a
9 copy. Basically, the quarterly report shows an ending
10 balance of \$5,746,950.53 as of June the 29th of 2001. And
11 the report that I'm sending copies around here details, or
12 summarizes, the monthly transactions as far as interest and
13 deposits. What they label as refunds is actually...are
14 actually disbursements that the Board has ordered and they
15 have paid out. There was one account collection there for
16 deposit that was inadvertently placed in the wrong account,
17 which they correct on their own internal audit.

18 As you can see, the interest rates are down
19 to...average interest rate down to 3.9% last month. It's
20 down from 6.1 in January. It shouldn't be a surprise to
21 anybody. If you remember, these were money market accounts.
22 These were not investments. So---.

23 CLYDE KING: Hallelujah.

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1 BENNY WAMPLER: At least they're earning money.

2 CLYDE KING: They're earning money.

3 BOB WILSON: At least they're earning some money.

4 CLYDE KING: Yeah.

5 BOB WILSON: The general business of the escrow
6 account is going well. We, I think, have good communication
7 going with the agent.

8 That being said, I will point out a few mistakes on
9 this letter. They show the balance here, and I apologize, I
10 didn't run these numbers until yesterday myself. So, I
11 didn't get a chance to get a corrected copy of these in.
12 They're actually showing their opening balance as the figure
13 that it was on January the 1st. I think somebody redid the
14 letter and didn't change all of their numbers like we all do
15 from time to time. Also, the balance shown here as of June
16 the 29th of 2001, which is 5.746 million does not reflect the
17 fees that they're showing on here as having been withdrawn,
18 which is \$5,000 per month. I don't feel like I complained
19 about this because the later they wait to withdraw, the more
20 we get to use our money. So, if you try to balance as you'll
21 find out, that particular amount has not been taken out. The
22 last time they pulled out \$30,000 at one time in March, which
23 covered all the way back to October. So, far be it from me

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1 to complain about their donating to us.

2 We have some minor problems with...not problems,
3 but some account...account problems that we have found just
4 in our routine checks where money has actually still been put
5 into an incorrect account. That has been corrected.
6 However, we're requiring them to do an audit trail on this to
7 change each individual deposit that has gone to this account
8 back to its origin and place it in the proper account at the
9 proper time, at the proper interest rate. That's going on
10 now. It should be completed by the end of this month. These
11 would be minor things actually. We're just trying to polish
12 it up. But things are going well with it. I've had no
13 significant problems of any sort.

14 SANDRA RIGGS: Have all disbursements that have been
15 ordered by the Board been actually disbursed by them? I
16 never receive a confirmation that the checks have gone out.
17 So, are there any in the pipeline or have they done all
18 disbursements.

19 BOB WILSON: To my knowledge, all disbursements have
20 been done. I'll make an effort to get that information to
21 you when I get it because they confirm it with me.

22 SANDRA RIGGS: Well, I don't..I don't really need to
23 know. I just---.

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1 BENNY WAMPLER: You don't need any more paper, do
2 you?

3 BOB WILSON: I'll be happy to pass it along.

4 SANDRA RIGGS: I just wanted to make sure that it's
5 working smoothly and that the way the orders are written that
6 they're able to do what they need to do.

7 BOB WILSON: The only real road blocks that I have
8 seen there anywhere have been when we actually mail out the
9 three part letters. There's always that question of who does
10 what first.

11 SANDRA RIGGS: Who has to get in touch with who.

12 BOB WILSON: Exactly. Yeah, do I wait for them to
13 call me or should I call them. I've been telling the bank to
14 routinely take those addresses and make contact with each of
15 those people and then leave it up to them to get back to us.
16 It seems to be going pretty smoothly.

17 BENNY WAMPLER: What kind of an agenda do we have
18 next month?

19 BOB WILSON: 19 items, I believe I counted.

20 BENNY WAMPLER: I've got a conflict on that day.
21 I'm supposed to be out all that week.

22 MASON BRENT: Well, let's change it. I don't want
23 to chair that meeting.

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1 BOB WILSON: That's self preservation.

2 BENNY WAMPLER: Can we get...can we back up? Can we

3 run it closer?

4 SANDRA RIGGS: Probably not, because of thirty days.

5 What is twenty days to publish after---.

6 BOB WILSON: Yeah, I think we've still got time to

7 do that if we don't come back too far. The deadline for

8 filing is already up. So, we've got no problems there. We

9 can probably a publication---.

10 BENNY WAMPLER: If we went to the 14th, does that

11 create a problem for anybody? I mean, some of you said

12 Monday is better for you. That week before is best. I'm not

13 trying to work this around me. I just happen to have a

14 conflict with this time.

15 CLYDE KING: Monday would be better for me.

16 BENNY WAMPLER: Tuesday,

17 MASON BRENT: I'll do either one.

18 CLYDE KING: Are you talking about 6th?

19 BENNY WAMPLER: Tuesday the 14th.

20 CLYDE KING: I mean...Tuesday the 14th?

21 BENNY WAMPLER: Yes, sir. You'd better get...we'll

22 need that for publication. That will give you twenty days.

23 MASON BRENT: That suits me.

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1 BOB WILSON: Yeah.

2 BENNY WAMPLER: Is that okay?

3 CLYDE KING: Yeah.

4 BENNY WAMPLER: Is that okay?

5 MASON BRENT: That's okay with me.

6 MAX LEWIS: Change it to the what, the 14th?

7 BENNY WAMPLER: The 14th.

8 RICHARD GILLIAM: The 21st or the 14th.

9 BENNY WAMPLER: The 14th.

10 BOB WILSON: I will have to check with the room and

11 such. I'm sure we can get alternate facilities if this one

12 is booked up. The reporter will have to check their schedule

13 and make sure they're available. Shall we tentatively go

14 with that date and if we can get everything to fall in place,

15 I'll notify everybody as soon as possible.

16 BENNY WAMPLER: Okay.

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1 STATE OF VIRGINIA,

2 COUNTY OF BUCHANAN, to-wit:

3 I, Sonya Michelle Brown, Court Reporter and Notary
4 Public for the State of Virginia, do hereby certify that the
5 foregoing hearing was recorded by me on a tape recording
6 machine and later transcribed by me personally.

7 Given under my hand and seal on this the 6th day of
8 August, 2001.

9

NOTARY PUBLIC

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My commission expires: August 31, 2005.

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